

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 386 OF 2019

PAUL OMONDI
OBIERO.....CLAIMANT

VERSUS

HIGHLANDS MINERAL WATER COMPANY
LIMITED.....
.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant has instituted this action to, inter alia, challenge the legality of the termination of the contract of service between the parties. He alleges that the Respondent constructively dismissed him from employment, a claim which the Respondent has denied.

Claimant's Case

2. The Claimant avers that the Respondent hired his services as Chief Operations Officer (COO) with effect from 1st March 2016 at a basic salary of Ksh. 850,000.00. He contends that in addition to the basic salary, the Respondent was to provide him with the following benefits: house allowance; fuel allowance; pension; and health insurance.
3. The Claimant avers that the Respondent also allocated him 20,651 shares under its Employee Share Option Scheme. In addition, he contends that the Respondent was to pay him annual bonus based on his performance.

4. The Claimant contends that as the Respondent's COO, he was responsible for its day to day operations. He avers that the Respondent's policy required him to report to its Chief Executive Officer (CEO).
5. The Claimant avers that his contract of service had a probationary term of six months which he successfully served. He contends that the contract was subsequently confirmed through the Respondent's letter dated 28th September 2016.
6. The Claimant avers that he worked for the Respondent diligently until 1st March 2018 when he issued his letter of resignation from duty. He contends that the resignation was forced on him.
7. The Claimant contends that an internal audit of the Respondent's operations performance matrices conducted between September 2017 and January 2018 revealed that the matrices had inherent deficiencies. He avers that the Respondent's CEO was notified of this fact. He contends that despite this reality, the CEO insisted on evaluating his (the Claimant's) performance using the defective matrices. He contends that this adversely affected his performance appraisals.
8. The Claimant further contends that on several occasions, the CEO vetoed operations procurement decisions. He avers that this adversely affected the discharge of his duties and hence his overall performance.
9. The Claimant avers that the CEO's conduct evinced bias against him. He contends that the CEO's prejudice against

him was further demonstrated by the fact that whilst members of his (the Claimant's) department were often applauded for excellent performance, the CEO would single him out for reprimand.

10. The Claimant asserts that on 17th December 2017, the CEO summoned him for a meeting at 10.00 o'clock on the same day. However, he avers that he was not informed of the agenda for the meeting.
11. The Claimant asserts that after attending the meeting, the CEO sent him an email titled "Appraisal Meeting". He contends that this was despite the fact that there had been no notice for a meeting to appraise his performance in line with the Respondent's policies.
12. The Claimant avers that in the aforesaid email, the CEO raised a number of issues which he (the Claimant) responded to through his email of 18th December 2017. He contends that he provided the CEO with what he considered to be the appropriate action plan to address the concerns which the CEO had raised in his email of 17th December 2017.
13. The Claimant thereafter gives a chronology of events which were triggered by the aforesaid email exchanges between him and the CEO. He contends that these events, coupled with aborted meetings between him and the CEO, resulted in the CEO demanding that he (the Claimant) quits employment
14. The Claimant avers that on 18th February 2018, the CEO sent him an email through which he threatened to make

drastic changes to the operations department. He contends that he understood this to be a threat to his job security. He contends that he felt frustrated by the CEO's actions.

15. The Claimant contends that on 1st March 2018, the CEO summoned him to a meeting on the morning of the same day. He avers that when he walked into the meeting room, he found the Head of Human Resources and the CEO.
16. The Claimant avers that the CEO told him that the working relationship between them (the CEO and the COO) had become a source of friction. He contends that the CEO demanded that he (the Claimant) quits employment.
17. The Claimant avers that he asked for time to reflect on the demand and give his feedback on 5th March 2018. However, he asserts that the CEO rejected the request and demanded for his response sooner than 5th March 2018.
18. The Claimant avers that the CEO rescheduled the meeting of 1st March 2018 to 2nd March 2018 for him (the Claimant) to provide his response to the demand. He contends that at the meeting of 2nd March 2018, the CEO demanded that he (the Claimant) tenders his resignation. In reaction, he avers that he was forced to tender a verbal resignation.
19. The Claimant contends that on 3rd March 2018, he received several telephone calls from the Head of Human Resource asking him to reduce his resignation into writing. He contends that this forced him to draft the letter of resignation and hand it over to the said officer on the same day.

20. The Claimant avers that after the CEO forced him to resign from employment, he (the Claimant) was conducted by one of the Respondent's directors who wanted to know why he had resigned from employment. He contends that he informed the director that he was going to disclose the reasons for his decision through a formal exit interview. However, he avers that the interview did not materialize.
21. The Claimant avers that the Respondent's actions breached the contract of service between the parties. As such, he contends that the Respondent terminated his services through constructive dismissal from employment.
22. The Claimant further avers that despite the fact that he was entitled to 20,651 employee shares, the Respondent did not transfer the shares to him. As such, he demands that the Respondent either transfers the shares to him or pays him their market value.
23. The Claimant further accuses the Respondent of having failed to remit his Pay as You Earn (PAYE) tax for the period between January 2018 and July 2018. He contends that as a result of this, the Kenya Revenue Authority declined to grant him a waiver of monthly rental income tax. He avers that the Kenya Revenue Authority has now demanded from him accrued monthly rental income tax of Ksh. 142,666.00 together with interest instead of granting him the tax waiver.
24. The Claimant further avers that after he quit the Respondent's employment, his efforts to secure alternative employment have proved futile. It is his case that this is

because the Respondent's CEO shared inaccurate data about his performance with prospective employers in a bid to sabotage his employment prospects. He contends that this has ruined his professional career.

25. The Claimant avers that the conduct of the Respondent's CEO has subjected him to embarrassment and mental anguish. He contends that the CEO made false and unsubstantiated accusations against him leading to the loss of his employment through constructive dismissal from employment. Consequently, he seeks various reliefs as set out in the amended Memorandum of Claim.

Respondent's Case

26. In response, the Respondent denies the Claimant's contention that it terminated his services through constructive dismissal from employment. The Respondent avers that the contract of service between the parties was terminated when the Claimant voluntarily resigned from employment.
27. The Respondent contends that after the Claimant resigned from employment, he was paid all his terminal dues including: salary for July 2018; accrued house allowance; and accrued car allowance. The Respondent further avers that the Claimant is not entitled to claim compensation for unfair termination of his contract since he voluntarily resigned from employment.
28. The Respondent avers that the Claimant is not entitled to claim fuel allowance since the benefit lapsed with his resignation from employment. It further avers that the

Claimant is not entitled to demand to be paid the pension contribution for July 2018 as the amount was remitted to the pension administrator.

29. The Respondent disputes the Claimant's claim for unpaid loan contributions to Metropolitan Sacco. It contends that the Claimant has not stated the specific amount in issue or the period the claim relates to. As such, it contends that the claim is vague and should be disallowed.
30. The Respondent contests the Claimant's assertion that it humiliated him. It contests his claim for damages for the alleged humiliation.
31. The Respondent avers that it is willing to settle the Claimant's claim for 20,651 shares. It avers that it is willing to pay him the value of the shares in lieu of transfer of the actual shares to him.
32. The Respondent denies the Claimant's claim for PAYE tax for the period between January 2018 and July 2018. It avers that it settled the tax liability with the tax collector.
33. In any event, the Respondent contends that the court is not seized of jurisdiction to determine the alleged tax dispute. During trial, the Respondent's witness stated that the dispute should be presented to the Tax Appeals Tribunal and not this court.

Issues for Determination

34. After evaluating the pleadings, evidence and submissions by the parties, the following issues arise for determination:-

- a) Whether the Claimant's contract was terminated on account of constructive dismissal from employment.
- b) If not, whether the contract was otherwise unlawfully terminated.
- c) Whether the court is seized of the requisite jurisdiction to adjudicate over the alleged tax dispute between the parties.
- d) Whether the Claimant is entitled to the reliefs which he seeks through this action.

Analysis

35. The law on constructive dismissal from employment is now fairly settled. Although termination of a contract of service under the concept is triggered by resignation of an employee from employment, it is nevertheless considered that it is the employer who has terminated the contract because of instigating an intolerable work environment for the employee. In effect, the employee's resignation from duty must be triggered by the intolerable work environment.
36. Black's Law Dictionary defines the concept as follows:-
"An employer's creation of working conditions that leave a particular employee or group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer's course of action that, being detrimental to an employee, leaves the employee almost no option but to quit."

37. In the case of **Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR)**, the learned Judges of the Court of Appeal had the following to say about the concept:-

“What is the key element and test to determine if constructive dismissal has taken place? The factual circumstances giving rise to constructive dismissal are varied. The key element in the definition of constructive dismissal is that the employee must have been entitled or have the right to leave without notice because of the employer’s conduct. Entitled to leave has two interpretations which gives rise to the test to be applied. The first interpretation is that the employee could leave when the employer’s behavior towards him was so unreasonable that he could not be expected to stay - this is the unreasonable test. The second interpretation is that the employer’s conduct is so grave that it constituted a repudiatory breach of the contract of employment - this is the contractual test.”

38. An employer’s conduct which constitutes repudiatory breach of a contract of service includes acts such as: unilateral alteration of a fundamental term of the contract; withholding of an employee’s salary without justifiable cause; and failure to assign an employee duties amongst others (**Duncan Murunyu Mungai v Slopes Media House Limited [2021] KEELRC 228 (KLR)**). In effect, acts which may imply repudiatory breach of a contract of service by the employer are confined to the employer’s

conduct which indirectly communicates his intention not to be bound by the terms of the contract.

39. This reality was reiterated by the Court of Appeal in the case of **Coca Cola East & Central Africa Limited v Maria Kagai Ligaga** (supra) when the Judges of the court stated as follows:-

“In constructive dismissal, the issue is primarily the conduct of the employer and not the conduct of employee - unless waiver, estoppel or acquiescence is in issue. Conduct by an immediate superior or supervisor may be enough to justify constructive dismissal. (See Hilton Industrial Hotels (UK) Ltd. -v- Protopapa [1990] ILR 316). An employer is required not to behave in a way that amounts to a repudiatory breach of contract.”

40. It is evident from the foregoing that constructive dismissal from employment does not arise when the employer directly demands that the employee quits employment. Rather, it is occasioned by the employer creating a work environment which makes it impossible for the employee to continue in service. In other words, the employer indirectly instigates the employee's departure without directly demanding that the employee quits.
41. This raises the question whether an employee who contends that he resigned from employment following overt and direct demands by the employer that he resigns can plead dismissal from employment on account of constructive dismissal from employment. In such case, the

employee quits employment not because the employer has indirectly pushed him out but because the employer has overtly demanded for his resignation.

42. In his publication titled "*Employment Law Guide for Employers*" 2nd Edn, George Ogembo speaks to the subject of direct compulsion of an employee by an employer to resign from employment (see pages 427 to 429 of the publication). The author quotes the case of ***East Sussex County Council v Walker 1972) II TR 280*** in which the learned Judges expressed themselves on the subject as follows:-

"In our judgment, if an employee is told that she is no longer required in her employment and is expressly invited to resign, a court of law is entitled to come to the conclusion that, as a matter of common sense, the employee was dismissed. Suppose that the employer says to the employee, 'Your job is finished. I will give you the opportunity to resign. If you don't, you will be sacked'. How, we would ask, is it possible to reach a conclusion other than that the employment is being terminated by the employer, even though the employee takes the first and more respectable alternative of signing a letter of resignation rather than being the recipient of a letter of dismissal? We feel that in such circumstances there really can be no other conclusion than the employer terminated the contract."

43. The author goes further to state that where an employee proves that the employer forced him to tender a

resignation, a case of dismissal will, most likely, be made. However, before arriving at this conclusion, the court has to first examine the totality of the circumstances surrounding the case to discern whether they imply compulsion on the employee to quit employment or whether they suggest that he resigned voluntarily.

44. In the court's view, there is a distinction between direct and indirect compulsion of an employee to resign. Indirect compulsion arises when the employer creates an intolerable work environment which pushes the employee to resign. This typically results in dismissal from employment through constructive dismissal.
45. On the other hand direct compulsion of an employee to resign though having the effect of a dismissal from employment does not denote constructive dismissal because in this case, the employee is not resigning in reaction to an intolerable work environment created by the employer. Rather, he resigns as a result of a overt and direct demand by the employer that he quits employment.
46. The court's attention has been drawn to the case of ***Rose Mwikali Nzuki v Food for the Hungry Kenya [2015] KEELRC 69 (KLR)*** in which the learned Judge held that a demand by an employer that an employee resigns from employment will result in constructive dismissal if the employee yields to the demand. However, it is apparent from that decision that the learned Judge did not distinguish between conduct by an employer which indirectly terminates a contract of service through

resignation by an employee and direct and overt demands by an employer that an employee resigns thus leading to termination of a contract of service. If the learned Judge had considered this distinction, she would probably have arrived at a different conclusion on the matter. It is for this reason that I am not persuaded by the holding in that decision.

47. Having regard to the foregoing, I do not think that the Claimant's case is one for constructive dismissal from employment. This is because it is not his case that the Respondent created an intolerable work environment thus forcing him to resign. Rather, he contends that the Respondent overtly and directly forced him to resign from work. As such and in the court's view, he ought to have re-characterized his Statement of Claim to plead that he lost his employment on account of the Respondent overtly and directly forcing him to tender an involuntary resignation rather than by contending that he was a victim of constructive dismissal from employment.
48. The foregoing notwithstanding, the court has to determine whether the Claimant has presented cogent evidence to demonstrate that his resignation (whether it was procured overtly and directly through coercion by the Respondent or whether it was procured indirectly by the Respondent creating an intolerable work environment) was involuntary. The totality of the evidence which was presented to court does not suggest that the resignation was involuntary.

49. Although the Claimant spoke of the Respondent's CEO having forced him to tender his resignation during the meeting of 1st March 2018, this fact was disputed by the defense. According to the defense, the Claimant's decision to resign was voluntary.
50. In law, there is a general presumption that a resignation from employment is voluntary. As such, if an employee contends that his/her resignation was involuntary, the burden of proof rests on him/her to tender persuasive evidence to establish this fact.
51. Speaking to this, the court in the case of **Christie v. United States | 518 F.2d 584 | Fed. Cir** stated as follows:-
- "Employee resignations are presumed to be voluntary. This presumption will prevail unless [the] plaintiff comes forward with sufficient evidence to establish that the resignation was involuntarily extracted."*
52. Despite the Claimant contending that his resignation was forced, he did not tender cogent material to support this contention. His letter of resignation dated 3rd March 2018 does not point to the fact that it was procured through coercion.
53. To quote the letter verbatim, the Claimant stated as follows:-
- "Dear Paul,*
As per our discussions of 1st March 2018, I am writing to notify you that I am resigning from my position as Chief Operating Officer with Highlands Mineral Water

Company. My last day of work will be May 31st upon which I will proceed on leave until 28th July.

I wish you and the company the best of success in the future.

If I can assist with the transition, please let me know.

Kind regards,

Paul Obiero''

54. This letter does not contain any indicators that it was procured through coercion. At the same time, there is no independent evidence which the Claimant tendered to demonstrate that there was pressure on him to resign from employment.
55. The first time that the Claimant suggested that he resigned under compulsion was when he wrote the email dated 21st April 2018 to the Respondent's director in response to an inquiry on why he had resigned from employment. However, he did not state the basis for his contention that the resignation was forced.
56. It is noteworthy that the Claimant wrote the aforesaid email more than one month after he had tendered the impugned resignation. The record shows that following his contention that the resignation was forced, the Respondent's management invited him for an exit interview to elaborate the averment. However, the exit interview did not take place.
57. In effect, the particulars of the alleged coercion on the Claimant to procure the impugned resignation were not presented to court to rebut the presumption in favour of

the resignation having been voluntary. As such, the court arrives at the conclusion that there is paucity of material to enable it to conclude that the impugned resignation was procured through coercion.

58. Absent cogent evidence to rebut the presumption of the voluntariness of the impugned resignation, the court finds that the Claimant has not satisfied the threshold for constructive dismissal. Neither has he tendered sufficient evidence to demonstrate that his contract was otherwise unlawfully terminated. As such, his claim that his employment was illegitimately terminated fails.
59. The next question for determination concerns whether the court is entitled to adjudicate on the tax dispute between the parties. The Claimant's case is that the Respondent did not remit his PAYE tax for January to July 2018. As a consequence, he contends that the Kenya Revenue Authority has flagged this noncompliance and refused to give him a tax waiver on rental income. Thus, he prays for judgment for the unremitted taxes.
60. The Respondent has opposed the claim. It contends that it has settled the Claimant's PAYE tax for the period in question. Further, it contends that even if the tax has not been settled, this court has no jurisdiction to adjudicate on the dispute since it is the preserve of the Tax Appeals Tribunal.
61. The court notes that *the Tax Appeals Tribunal Act* Cap 469A Laws of Kenya establishes a Tax Appeals Tribunal with the mandate to hear appeals against any tax decision

by the Commissioner General (Commissioner). By virtue of section 12 of the Act, a person who disputes the decision of the Commissioner on any matter arising under the provisions of any tax law may, subject to the provisions of the relevant tax law, upon giving notice in writing to the Commissioner, appeal to the Tribunal. Under section 32 of the Act, appeals from the decision of the Tribunal lie with the High Court.

62. In this case, the Claimant contends that the Kenya Revenue Authority has flagged the failure to remit his PAYE tax by the Respondent. On the other hand, the Respondent contends that the tax liability was settled.
63. The trigger for the tax dispute between the parties was the demand by the Commission to the Claimant for alleged tax arrears. Since there is a dispute regarding whether the tax liability is legitimate, the validity of the Commissioner's decision to demand for the alleged tax comes into question.
64. Such dispute questioning the validity of the Commissioner's demand for the tax ought to have been presented to the Commissioner pursuant to Part VIII of *the Tax Procedures Act*, Cap 469B Laws of Kenya and thereafter, the Tax Appeals Tribunal under *the Tax Appeals Tribunal Act*. It is only after this that the matter could be escalated to court in line with the principle of exhaustion of alternative dispute resolution procedures.
65. Even if the tax dispute stems from the employer-employee relationship between the disputants, the court would,

subject to confirmation that it has jurisdiction over the matter, only intervene in the dispute once the parties have exhausted the existing alternative dispute resolution procedures. In this case, the law contemplates that the parties should have approached the Commissioner and the Tax Appeals Tribunal over the dispute before moving to court by way of appeal.

66. Importantly, the Respondent has questioned the court's jurisdiction to entertain the dispute in view of its specialized jurisdiction under section 12 of *the Employment and Labour Relations Court Act*. The court notes that under *the Tax Procedures Act* and *the Tax Appeals Tribunal Act*, appeals on tax disputes are to be filed before the High Court (see section 53 of *the Tax Procedures Act* and section 32 of *the Tax Appeals Tribunal Act*). Given that the law vests the mandate to adjudicate tax appeals specifically in the High Court and having regard for the specialized jurisdiction of the Employment and Labour Relations Court as prescribed under section 12 of *the Employment and Labour Relations Court Act*, it is doubtful that this court is seized of jurisdiction to venture into adjudicating on the instant tax dispute. In the premises, the court declines to adjudicate on the dispute.
67. But even if it were to be assumed that the court was seized of jurisdiction over the matter, it is doubtful that the Claimant would be the right individual to pursue payment of the tax arrears. This is because the arrears are the property of the State and not the Claimant (see Section 32

(1) of *the Tax Procedures Act*). As such, the body which is mandated to sue for their (the tax arrears) payment is the Kenya Revenue Authority through the Commissioner (see section 39 of *the Tax Procedures Act*). As such, it is doubtful that the Claimant has the *locus standi* to sue over the matter.

68. The Claimant has prayed for various other reliefs. First he seeks for compensation for unfair termination of his contract. However, this relief cannot be granted in view of the court's finding that the Claimant's contract was not irregularly terminated. As such, the relief is declined.
69. The Claimant has prayed for: unpaid salary for July 2018; unpaid house allowance for July 2018; and unpaid car allowance for July 2018. However, the Respondent asserts that all these claims were settled.
70. During trial of the case, the Claimant confirmed that he was paid salary for July 2018. He also confirmed having been paid house and transport allowance for that month. Having regard to the foregoing, the claims for salary arrears, house and car allowance for July 2018 are declined.
71. The Claimant has also claimed for unpaid pension contributions for July 2018. However, the Respondent asserted that this amount was not payable since it had allegedly been released to the pension fund administrator.
72. Although the Respondent stated that it remitted the pension contribution to the pension administrator, it did not present evidence to support this assertion. As such, the

court is unable to agree with it (the Respondent) that it remitted the cash to the pension administrator. In the premises, the court orders it (the Respondent) to pay to the Claimant the sum of Ksh. 25,200.00 being the unremitted pension contribution for July 2018.

73. The Claimant also seeks for payment of Ksh. 30,000.00 to cover fuel allowance for July 2018. However, the Respondent contests this claim on the ground that it was only applicable during the subsistence of the contract of service between the parties. It contends that the allowance lapsed the moment the employment relationship between them came to a close. It further contends that once the parties parted ways, the Claimant lost the right to claim fuel allowance which had accrued but had not been paid.
74. According to the Claimant's letter of resignation, he proceeded on leave until 28th July 2018 when the resignation crystalized. As such, he remained in the Respondent's employment during this month even though he was on leave.
75. According to the contract of service between the parties, the Claimant was entitled to fuel allowance of Ksh. 30,000.00 whilst in the Respondent's employment to facilitate his movement to and from the place of work. The contract did not specify whether the allowance was not payable during the Claimant's leave.
76. The contention by the Respondent that the Claimant lost the right to claim the accrued allowance the moment his contract was closed is unmerited. All benefits which had

accrued to the Claimant at the time of his release from employment are due and payable to him. This includes accrued fuel allowance.

77. Since the Claimant left the Respondent's employment on 28th July 2018, he was entitled to be paid fuel allowance for that month. As there is no evidence that the allowance was paid to him, the court enters judgment for him for Ksh. 30,000.00 to cover the allowance.
78. The Claimant has also prayed for judgment for unpaid loan contribution for July 2018 for a loan from Metropolitan Sacco. However, he did not provide cogent evidence to support this claim. For instance, he did not produce his pay slip for July 2018 to speak to the fact that the loan instalment was deducted by the Respondent. Similarly, he did not provide a statement from the Sacco to demonstrate that the Respondent did not remit the loan instalment for the month. Absent this evidence, the court is unable to verify the claim. As such, it fails.
79. The claims for unpaid PAYE and monthly rental income tax are declined for want of jurisdiction.
80. The Claimant prays for aggravated damages for humiliation and embarrassing treatment. However, he did not table cogent evidence to support his contention that the Respondent humiliated or embarrassed him. As such, the claim fails.
81. The Claimant has prayed for the market value of 20,651 shares which the Respondent was supposed to have transferred to him but did not. The Respondent is not

opposed to this claim. As such, the Respondent is ordered to pay the Claimant the market value of the aforesaid shares.

82. The Claimant also seeks an order that the Respondent issues him with a Certificate of Service. This is a departing employee's entitlement under section 51 of *the Employment Act*. As such, the Respondent is directed to issue him with the requisite Certificate of Service.
83. The Claimant is awarded interest on the amount awarded to him at court rates from the date of this judgment.
84. Each party to bear own costs of the claim.

Summary of the Findings and Decision

- i) The court finds that the Claimant did not present cogent evidence to rebut the presumption of the voluntariness of the impugned resignation.
- ii) As such, the court finds that the Claimant has not satisfied the threshold for constructive dismissal.
- iii) Neither has he tendered sufficient evidence to demonstrate that his contract was otherwise unlawfully terminated.
- iv) As such, his claim that his employment was illegitimately terminated fails.
- v) The court finds that it is not seized of jurisdiction to adjudicate on the tax dispute between the parties.
- vi) As such, it declines to pronounce itself on the matter.
- vii) However, even assuming that the court had jurisdiction over the case, it would not have entertained the claim for the following two reasons:-

- a) The Claimant did not exhaust the alternative dispute resolution mechanisms under *the Tax Procedures Act* and *the Tax Appeals Tribunal Act* before he approached the court with the dispute.
 - b) The tax liability is the property of the State. Therefore, only the Commissioner General can sue to recover it. As such, the Claimant lacks the *locus standi* to sue for the arrears.
- viii) The Claimant's prayer for compensation for unfair termination of his employment cannot be granted in view of the court's finding that his contract was not irregularly terminated.
- ix) The Claimant's prayer for: unpaid salary for July 2018; unpaid house allowance for July 2018; and unpaid car allowance for July 2018 are declined because he conceded that the benefits were all settled albeit after he instituted these proceedings.
- x) The court orders the Respondent to pay to the Claimant the sum of Ksh. 25,200.00 being the unremitted pension contribution for July 2018.
- xi) The court enters judgment for the Claimant for Ksh. 30,000.00 to cover fuel allowance.
- xii) The Claimant's prayer for the loan instalment for July 2018 to Metropolitan Sacco is declined.
- xiii) The Claimant's prayer for aggravated damages for humiliation and embarrassing treatment is declined for want of proof.

- xiv) The Respondent is ordered to pay the Claimant the market value of 20,651 employee shares.
- xv) The Respondent is directed to issue the Claimant with the requisite Certificate of Service in terms of section 51 of *the Employment Act*.
- xvi) The Claimant is awarded interest on the amount awarded at court rates from the date of this judgment.
- xvii) Each party to bear own costs of the claim.

Dated, signed and delivered on the 15th day of December, 2025

**B. O. M. MANANI
JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

ORIGINAL