



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1494 OF 2016

CORPORATE TALK GROUP LTD.....

CLAIMANT

VERSUS

LYNN SITATI.....**1ST**

RESPONDENT

JOHN MAINGI KIMAMO.....**2ND**

RESPONDENT

CHRIS KANURI.....**3RD**

RESPONDENT

LILIAN WOOD.....**4TH**

RESPONDENT

RESPONDENT

JUDGMENT

1. The Claimant instituted this suit by a Memorandum of Claim dated 26th July 2016, in which it identified the dispute as relating to breach of contract; violation of its protectable trade and economic interests under the employment contracts of the 1st to 4th Respondents; breach of the doctrine of *pacta sunt servanda* by the said Respondents; fraud, connivance and collusion among the Respondents to undermine those interests; and violation of Article 41 of the Constitution on fair labour practices. On that basis, the Claimant sought the following reliefs:

- i) A declaration that the termination of the 1st to 4th Respondents' employment was lawful;
- ii) A declaration that the 1st to 4th Respondent breached their contracts of employment;
- iii) A declaration that the misconduct of the 1st to 4th Respondent directly and or indirectly caused it to lose tender reference number KRC/2016/002 by Kenya Reinsurance Corporation;

- iv) An Order for payment of Kshs. 16,000,000/- by the 1st to 5th Respondents individually and collectively;
- v) A declaration that the Claimant is entitled to be compensated for violation of its Constitutional rights as envisaged under Article 40 and 41 of the Constitution;
- vi) General damages;
- vii) Costs; and
- viii) Any other relief the court deems fit to grant.

2. In response, the 1st Respondent filed a Memorandum of Response and Counterclaim dated 18th April 2017, while the 4th and 5th Respondents filed a Memorandum of Response dated 9th March 2017. The 2nd and 3rd Respondents did not file any responses, and in any event, the suit against them was withdrawn in the course of the proceedings. Before considering the responses, it is necessary to note that on 6th February 2026, when the matter came up for hearing, the Court observed that the Claimant had failed to file a witness statement despite two prior orders directing it to do so. The Court further noted a pattern of laxity in the prosecution of the suit and conduct aimed at delaying its hearing. In view of this disregard of court orders, the Court dismissed the

Claimant's suit and directed that the matter proceeds to hearing of the 1st Respondent's counterclaim.

3. In her counterclaim, the 1st Respondent avers that she was initially employed by the Claimant as an Accounts Director under a contract dated 19th November 2012 at a monthly salary of Kshs. 90,000/-. She states that, owing to her exemplary performance, she was retained in the same position under a subsequent contract dated 26th May 2015, which increased her salary to Kshs. 190,000/-. She contends that she served diligently until 11th March 2016 when she was summarily dismissed. She contends that the reason for dismissal namely, breach of contract by occasioning loss of tender Reference Number KRC/2016/002 resulting in financial loss to the Claimant was false. Furthermore, she states that she was not afforded an opportunity to defend herself against the allegations. Further compounding the illegalities, the 1st Respondent avers that the Claimant notified the public in the Daily Nation on 20th April 2016 that she was no longer its employee, casting aspersions on her

character and reducing her prospects of securing employment. Consequently, she seeks:

- (1) A declaration that her termination of employment was unlawful.
- (2) A declaration that she is entitled to Kshs. 3,491,500/- broken down as follows:
 - (i) Kshs. 190,000/- pay in lieu of notice;
 - (ii) Kshs. 317,500/- in accrued leave dues for the period between 1st December 2012 and 30th March 2016.
 - (iii) Kshs. 405,000/- in unpaid house allowance between 1st December 2012 and 30th May 2015.
 - (iv) Kshs. 285,000/- in unpaid leave allowance between 1st June 2015 and 30th March 2016.
 - (v) Kshs. 2,280,000/- in 12 months' salary compensation for unlawful dismissal
 - (vi) Kshs. 14,000/- in unremitted deductions to Amana Umbrella Pension Scheme between 1st January 2015 and 28th February 2016.
- (3) Costs of the suit
- (4) Interest on items 2 and 3 above

(5) Any other relief the court deems just and fit.

4. At the hearing, the 1st Respondent adopted her witness statement dated 18th April 2017 as her evidence in chief and produced the documents in her list of the same date as exhibits 1-9. Upon the close of her case, both the 1st Respondent and the Claimant filed written submissions.

1st Respondent's Submissions

5. The 1st Respondent identifies the issues for determination as; whether her dismissal from employment was fair; and whether she is entitled to the reliefs sought in the counterclaim.

6. As regards fairness of her dismissal from employment the 1st Respondent submits that it was neither substantively nor procedurally fair. She relies on **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR**, which summed the fairness test as follows:

“For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid

reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”

7. With respect to substantive fairness the 1st Respondent submits that the reasons for dismissal namely: simultaneously working for the 5th Respondent and the Claimant as well as using the Claimant's information for herself and the 5th Respondent's benefit were not proven. She asserts that no evidence was adduced to prove those reasons neither were any allegations of breach of contract proven. Conversely, she maintains that her services were exemplary as evinced by her salary increment on 26th May 2015 and the fact that she had never been cited for poor performance. Further supporting her diligence, she avers that if at all there was dereliction of duty it was attributable to the Claimant's Administrator one Trizer Wandira and CEO Timothy Muthaura. She highlights the fact that they failed to attach vital documents to the tender such as tax compliance certificate and proof of global affiliation resulting in the Claimant's failure to secure the tender number

KRC/2016/002. In support of her position, she relies on **Jhpiego Kenya v Duncan Mwirigi Arithi [2017] eKLR**, where the court emphasized that where the employer fails to prove reasons for termination under section 43 of the Employment Act then the termination is unfair under section 45 of the Employer.

8. On procedural fairness, she submits that section 41 of the Employment Act was not complied with. She states that the dismissal letter was delivered to her residence in her absence while she was on sick leave. She further points to the inconsistency between the newspaper notice indicating that her employment had ceased on 7th March 2016 and her receipt of the dismissal letter on 8th March 2016, as evidence that she was not accorded a hearing. She relies on **Kenya Union Of Commercial Food And Allied Workers v Meru North Farmers Sacco Limited [2014] KEELRC 813 (KLR)**, which underscored the centrality of section 41 of the Employment Act notwithstanding the reasons for termination.

9. Concerning the reliefs sought the 1st Respondent submits that this court is empowered to grant appropriate remedies under the law, in view of her unlawful termination. She cites **Kenfreight (E.A) Limited v Benson K. Nguti [2019] eKLR**, in which the Supreme Court held that remedies for unlawful termination fall within section 49 of the Employment Act and are to be awarded at the Court's discretion guided by section 49(4). On the question of pay in lieu of notice, she submits that she is entitled to the same pursuant to section 36 of the Employment Act, as her employment was terminated without notice. She urges the court to award her Kshs. 190,000/-. On compensation for unlawful dismissal, the 1st Respondent submits that under sections 49 and 50 of the Employment Act, the Court may award up to twelve months' salary. She urges the Court to grant the maximum award of Kshs. 2,280,000/-, being twelve months' salary, on account of her unblemished employment record, the public and prejudicial manner of her dismissal through a newspaper advertisement, and the involvement of police officers despite the absence of any criminal conduct on her part.

10. As for unpaid house allowance, she asserts that she is entitled to the same under section 31 (1) of the Employment Act, the Claimant having neither provided accommodation nor paid house allowance. She relies on the case of **Martin Ireri Ndwiga v Olerai Management Company [2017] eKLR**, where the Court awarded house allowance at 15% of salary in the absence of a clause on provision of accommodation in the employment contract. She therefore urges the Court to award the Kshs. 690,000/- sought. On accrued leave, the 1st Respondent submits that she was entitled to annual leave which she neither took nor was compensated for. She urges the court to grant her the Kshs. 317,500/- sought given the Claimant's failure to produce records under sections 74 of the Employment Act. She cites section 28 of the Employment Act, and also relies on the case of **Mwende Mbiti v Citrus Inn Limited [2018] eKLR**, where the Court held that in the absence of records demonstrating that leave was taken, an employee is entitled to payment in lieu thereof.

11. Regarding pension dues, the 1st Respondent submits that although deductions were made towards the Amana Umbrella Pension Scheme, the Claimant failed to remit a total of Kshs. 14,000/-. She contends that this claim was not controverted and is therefore due and payable. On costs, the 1st Respondent submits that under section 12(4) of the Employment and Labour Relations Court Act and Rule 70(1) of the Employment and Labour Relations Court (Procedure) Rules, costs follow the event. She relies on **Achieng v Agimba & another (Cause E180 of 2021) KEELRC 540**, where the Court awarded costs to a successful claimant. She urges the Court to award her costs, noting that she was compelled to defend a claim that remained unprosecuted for several years while also pursuing her counterclaim. Consequently, she urges the court to allow the counterclaim as prayed.

Claimant's Submissions

12. The Claimant submits that the 1st Respondent's summary dismissal was justified and compliant with both the substantive and procedural requirements of the law. On substantive justification, the Claimant submits that the

dismissal was grounded on valid and fair reasons, namely: dual employment with the 5th Respondent, fraudulent misrepresentation, misuse of confidential information, and conflict of interest. It cites section 43 of the Employment Act, which obligates an employer to prove the reasons for termination, and contends that it discharged this burden through documentary evidence including fraudulent declarations, a forged KenGen letter, and correspondence from KenGen disowning the said reference. The Claimant cites **John Kipchirchir Maritim v Ken Knit Kenya Limited [2015] eKLR**, for the proposition that an employer must demonstrate valid and fair reasons for dismissal, which it asserts it has done.

13. On procedural fairness, the Claimant submits that it complied with section 41 of the Employment Act. It contends that the dismissal letter dated 8th March 2016 expressly notified the 1st Respondent of the allegations and invited her to provide an adequate explanation before dismissal takes effect. The Claimant submits that the 1st Respondent, through her advocates, responded by way of a letter dated

18th March 2016, which merely issued a blanket denial without addressing the substance of the allegations. It asserts that it duly considered this response but found it inadequate. The Claimant maintains that the process satisfied the requirements of fairness and that it cannot be faulted for the 1st Respondent's failure to meaningfully engage. It asserts that the case of **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR**, is distinguishable on the basis that, the 1st Respondent herein was afforded an opportunity to respond to the allegations.

14. Turning to the counterclaim, the Claimant submits that it is wholly unfounded as it is premised on the incorrect assertion that the dismissal was unlawful. It contends that, having demonstrated the lawfulness of the dismissal, the counterclaim must fail in its entirety. On the claim for pay in lieu of notice and compensation, the Claimant submits that under section 44(3) of the Employment Act, summary dismissal for gross misconduct disentitles an employee to notice or payment in lieu thereof. It further submits that compensation under section 49(1)(c) is only available where termination is found to be unfair, which is not the case here.

15. In the alternative, it asserts that even if the Court were to find procedural deficiencies, section 49(4) requires consideration of the employee's contributory conduct. It submits that the 1st Respondent's fraud and dishonesty were the reasons for her dismissal, which warrant a reduction or denial of compensation. In support, it cites the case of **John Rono v Kerio Valley Development Authority [2016] KEELRC 969 (KLR)**, where the Court held that substantive fairness may significantly influence the remedies awarded.

16. On house allowance and leave, the Claimant submits that the 1st Respondent's salary was consolidated. It relies on the case of **Martin Ileri Ndiwiga v Olerai Management Company [2017] eKLR**, for the position that house allowance is not payable where salary is consolidated. As regards leave, the Claimant submits that the claim is unproven, asserting that the 1st Respondent failed to demonstrate that she applied for leave and was denied. On pension dues, the Claimant submits that while it does not dispute the claim for Kshs. 14,000/- in principle, any such amount, if found due, ought to be remitted directly to the

pension scheme. It further urges the Court to set off any such amount against the losses occasioned by the 1st Respondent's misconduct.

Disposition

17. The 1st Respondent seeks in her counterclaim for various reliefs all which are primarily pegged on the dismissal save for the question of pension dues amounting to Kshs. 14,000/-. The Claimant concedes that the sum if liable is payable directly to the pension scheme and the Court concurs. The 1st Respondent asserts the sum of Kshs. 14,000/- is owed and there is evidence this sum is due to be remitted to the pension scheme. The Claimant is ordered to ensure the remittance of the sum within 14 days of the Judgment. There will be no order as to costs on this sum should the Claimant comply with the order herein.

18. The balance of the claim revolves around the dismissal. In order for termination to be sanctioned by a Court such as this one, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while

procedural fairness addresses the procedure adopted by the employer in effecting the termination. In the case of the 1st Respondent, there were allegations of double employment and suspicion, however can never take the place of evidence. There was no evidence there was breach of contract by the 1st Respondent occasioning loss of tender Reference Number KRC/2016/002 resulting in financial loss to the Claimant. The 1st Respondent was not granted an opportunity to defend herself against the allegations. She also faced the daunting prospect of unemployability due to the notification that the Claimant caused to be made to the public in the Daily Nation newspaper of 20th April 2016 wherein the Claimant posted a notice that the 1st Respondent was no longer its employee. This cast negative aspersions on her character and had the real prospect of reducing her chances of securing subsequent employment.

19. The Claimant asserts the salary was consolidated and that house allowance was indeed paid to the 1st Respondent. This was not supported by the evidence adduced and therefore the 1st Respondent will be entitled to the sum of

Kshs. 342,000/- being house allowance that was unpaid for the 12 months prior to her termination. As she sought payment of leave dues for a period in excess of one year since the same is a continuing injury, she will only have payment for 12 months which is Kshs. 102,972.97. On the issue of leave allowance, she is entitled to Kshs. 285,000/- in unpaid leave allowance between 1st June 2015 and 30th March 2016. Due to the manner of termination and the fact the Claimant advertised the end of the contract to the whole world, which was entirely unnecessary and seems to have been driven by spite and ill will, a maximum of 12 months compensation would suffice. The 1st Respondent is thus entitled to Kshs. 2,280,000/- being 12 months' salary compensation for the unlawful dismissal.

20. The Court having found the termination that was meted to the 1st Respondent unfair and unlawful within the meaning of the law as she was not granted the safeguards in law, returns the 1st Respondent is therefore entitled to recompense as follows:-

- i. Kshs. 190,000/- pay in lieu of notice;

- ii. Kshs. 102,972.97 in accrued leave dues;
- iii. Kshs. 342,000/- in unpaid house allowance;
- iv. Kshs. 285,000/- in unpaid leave allowance;
- v. Kshs. 2,280,000/- in 12 months' salary compensation for unlawful dismissal.
- vi. Interest at court rates on the sums in (i), (ii), (iii), (iv) and (v) above from the date of the judgment till payment in full.
- vii. Costs of the suit.

It is so ordered.

Dated and delivered at Kisumu this 20th day of April

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**