



Registered Trustees of Jesse Kay Children’s Hospital v Njagi (Appeal E237 of 2023) [2025] KEELRC 670 (KLR) (28 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 670 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E237 OF 2023
NJ ABUODHA, J
FEBRUARY 28, 2025

BETWEEN

THE REGISTERED TRUSTEES OF JESSE KAY CHILDREN’S HOSPITAL APPELLANT

AND

JOAN LILLY WANJIRU NJAGI RESPONDENT

(Being an appeal arising from the entire Judgment of Honourable S. ASWANI OPANDE delivered in MC. ELRC No. E1210 of 2020 on 16th October,2023.)

JUDGMENT

(Being an appeal arising from the entire Judgment of Honourable S. ASWANI OPANDE delivered in MC. ELRC No. E1210 of 2020 on 16th October,2023.)

1. Through the Memorandum of Appeal dated 15th November 2023, the Appellant appeals against the whole Judgment of Honourable Magistrate S. Aswani Opande delivered on 16th October,2023.
2. The Appeal was based on the grounds that:
 - i. The Learned Magistrate erred in law and in fact in failing to appreciate the proper effect and purport of the pleadings and evidence before it and in arriving at a decision which is not supported by or is manifestly against the weight of the evidence.
 - ii. The Honourable Magistrate erred in law and in fact by disregarding the totality of the Appellant’s pleadings, documents and cited authorities and as a result arrived at a decision materially unsupported by the law quite contrary to established jurisprudence.
 - iii. The Learned Trial Magistrate erred in law and in fact by failing to appreciate that the Respondent was on a fixed term contract with a definite expiration time.



- iv. The Learned Trial Magistrate erred in law and fact finding that the Claimant was unfairly and unlawfully terminated from employment yet the Respondent was engaged on a fixed term contract.
 - v. The Learned Trial Magistrate erred in law and fact by awarding the Respondent house allowance yet the same was included in the gross salary paid to the Respondent as evidenced by the contracts between the parties.
 - vi. The Learned Trial Magistrate erred in law and fact by finding that the Respondent was unlawfully declared redundant yet the Respondent was on a fixed term Contract.
 - vii. The Learned Trial Magistrate erred in law and fact by finding that the Respondent is entitled to two months' compensation for unlawful termination but went ahead to award six months' compensation for the same.
 - viii. The Learned Trial Magistrate erred in law and fact and misdirected himself by holding and insinuating that the Respondent was entitled to payment for eight (8) days in November, 2020 without any justifiable reason or legal basis.
 - ix. The Learned Trial Magistrate erred in law and misdirected himself by failure to appreciate the Respondent's testimony and express admission that she had been informed about salary deductions as a result of the global pandemic, Corona Virus 2019 which affected the financial capabilities of the Appellant.
 - x. The Learned Trial Magistrate erred in law and fact by failing to appreciate the law and the elements of the redundancy vis a vis termination of fixed term contracts.
 - xi. The Learned Trial Magistrate erred in law and fact by failing to appreciate the law on fixed term contracts and failing to appreciate the undisputed admission and confirmation by the Respondent at the trial that she was on fixed term contracts.
 - xii. The Learned Trial Magistrate erred in law and fact by failing to appreciate that the evidence on record to the effect that there was no evidence on record to show that the Appellant unfairly terminated the Respondent's employment.
 - xiii. The Judgment of the Honourable Magistrate is manifestly punitive against the Appellant and contrary to the overwhelming evidence and submissions of the Appellant.
 - xiv. The Learned Trial Magistrate erred in law and fact in failing to appreciate the proper effect and import of the terms of the contracts of service between the Appellant and the Respondent.
 - xv. The Learned Trial Magistrate erred in law and fact in failing to appreciate the proper effect and import of fixed term contracts and the law governing the same.
3. The Appellant prayed that the Appeal be allowed with costs of this Appeal and lower court, the Judgment of the Trial Court made on 16th October 2023 and the decree issued hereunder against the Appellant be set aside with orders substituted thereof dismissing the Claimant's Amended statement of claim dated 19th July, 2021.
 4. The Respondent on the other hand being dissatisfied with the above judgment filed a Memorandum of Cross Appeal dated 2nd May, 2024 on the grounds that:



- i. The Honourable court erred in law by dismissing the order for general damages for discrimination on account of pregnancy and subjecting the Respondent to servitude and mental torture at Kshs 3,000,000/=
 - ii. The Honourable Court erred in law by dismissing the order for general damages for exposure to a bad and dangerous working environment at Kshs 2,000,000/=
 - iii. The Honourable Court erred in law and fact by holding that the Respondent having been dismissed on grounds of redundancy was thus estopped from claiming she was discriminated.
 - iv. The Honourable Court erred in law and fact by holding that failure of and by the Respondent in sustaining any injuries proved that she was not exposed to poor, bad and dangerous working environment thus no damages could be awarded.
 - v. The Honourable Court erred in law by holding that there can be no damages awarded based on an employment contract.
 - vi. The Honourable Court erred in law by failing to take in to consideration Respondent's submissions and binding precedents.
5. The Respondent prayed that the Appellant's appeal be dismissed, the Respondent's cross appeal be allowed and as such an order for general damages as prayed in the Amended Statement of Claim dated 19th July,2021 with the costs of the appeal and cross appeal being borne by the Appellant.
 6. The Appeal and the Cross Appeal were disposed of by written submissions.

Appellant's Submissions

7. The Appellant's Advocates Robson Harris Advocates LLP filed written submissions dated 20th January 2025 and on the issue of whether Respondent was unfairly terminated from employment, counsel submitted that the contract of service between the Respondent and the Appellant provided for termination of the Contract by either party by giving one month's notice or payment in lieu of notice.
8. Counsel submitted that the Respondent's employment contract was a fixed term contract which was set to lapse on 31st December 2020 and the Respondent admitted during hearing to having been employed on a fixed term contract basis. That the Appellant terminated the Respondent's contract by offering her one month's payment in lieu of notice as contained in her contract.
9. Counsel submitted that the contracts were fixed term contracts which expressly provided that the Respondent was not obliged to renew the same. That the Appellant was engaged on one-year contracts that would be renewable based on availability of funds and appraisal performance. Counsel relied on the case of *George Makau & 2 others v Label Converters Limited* [2016] eKLR and submitted that parties are bound by the terms of their contract. That the Respondent was not unfairly terminated from employment because she repudiated her employment contract by absconding duty.
10. On the issue of whether the trial court erred in fact and law by awarding the Respondent the various reliefs in the Judgment delivered on 16th October 2023, counsel submitted that the trial court erred in law and fact by awarding the various reliefs. That the Respondent was offered one month's salary in lieu of notice at the point of termination of the contract and the contract was terminated over inability of funds to continue to sustain the Respondent as provided for in the termination clauses of the various contracts which contracts the Respondent agreed to be bound.



11. Counsel submitted that it has never declined to pay the one month's salary in lieu of notice and the Honorable Magistrate awarded 5 months' salary as compensation for unfair termination when in the said judgment the court awarded six months and on another part two months salary as compensation in paragraph 5 and 6 respectively. That the court was alive to the fact that the Respondent's contract was to lapse in December, 2020 and the same was terminated in November, 2020. That the award of five months salary as compensation was exorbitant in the circumstances and unsubstantiated. Counsel relied on the case of *Abere v Mini Bakeries (Nairobi) Limited* (Cause E 0040[2024] KEELRC 2207 (KLR) (19 September 2024) (Judgment) where the court made an award of two months' salary for an employee that had worked for over 10 years.
12. Counsel submitted on the salary deductions for June, 2020 to October, 2020 at Kshs 1010,215/= that the Respondent had been informed while on maternity leave about the wage reduction occasioned by the Covid-19 pandemic. That it was unfair for the trial court to award the Respondent deducted wages that affected all the Appellant's staff members.
13. Counsel submitted on the house allowance award that the Respondent was paid a net salary of Kshs 50,003.00 which included her house allowance. That the Respondent's gross salary amounted to Kshs 62,994.00 after statutory deductions it would come to net salary of Kshs 50,003.00. That it was unfair for the trial court to award the Respondent Kshs 247,514 as unpaid house allowance.
14. Counsel submitted on the issue of certificate of service that the Respondent never cleared with the Appellant despite being required to do so before issuance of the certificate of service. On the award of severance pay counsel submitted that the Respondent was not entitled to severance pay as per section 40(1) of the Employment Act. That the Respondent's termination arose over unavailability of funds to sustain the Respondent's employment.
15. Counsel submitted on 8 days' salary for November 2020, that there was no justifiable reason for the award of Kshs 13,335. On the issue of what was the appropriate relief, Counsel submitted that the court should set aside the Judgment and Order of court of 16th October, 2023. That the Respondent should not be awarded severance pay together with compensation for unfair termination as the same was unfounded in law and even if the court would have been right in its decision of 16th October, 2023 it would be in the interest of justice and fairness to award the Respondent two months' salary noting the circumstances. Counsel relied on among others the case of *Adera v Central Organization of Trade Unions* (Cause E033 of 2023) [2024] KEELRC 1058 (KLR) (25 April 2024) (Judgment) in support of the two months' salary compensation.

Respondent's Submissions

16. The Respondent's Advocates Kinyua Mbaabu & Company Advocates filed its submissions dated 13th December 2024 and on the issue of whether the Appeal is merited, counsel submitted that being a first Appeal, the court is obliged to re-appraise, re-assess and re-analyze the evidence on record before the court.
17. Counsel relied on the case of *Musera versus Mwechelesi & another* [2007] 2KLR 159 and submitted that the appellate court should be slow to interfere with the trial court's findings unless satisfied that there was absolutely no evidence or the trial court had misunderstood the weight and bearing of the evidence before him thus arrived at unsupportable position.
18. Counsel submitted on the grounds of Appeal and on the issue of whether the trial court failed to appreciate the proper effect and purport of pleadings and disregarded the Appellant's pleadings and authorities that these grounds should fail because from the reading of the judgment it was clear that



the learned magistrate reiterated the pleadings filed by the Appellant. That the court considered the pleadings and evidence before making its determination and the fact that the court determined against the Appellant it is not to be faulted.

19. On the issue of whether the trial magistrate erred by failing to appreciate that the Respondent was on a fixed term contract counsel submitted that the Respondent was employed vide a contract dated 9th February 2018, signed on 11th February 2018, the contract was renewable annually upon satisfactory performance based on appraisal and availability of funds and was never given any renewed contract as such, continued on same terms until termination.
20. Counsel submitted that the Appellant produced additional contracts for the year 2019 and 2020 but the same were never served upon the Respondent as evidenced by lack of signature and their production was meant to cover the Appellant tracks as the terms were not same as original contract to negate certain prayers like house allowance and renewability. That the Appellant's witness Mr. Muchiri contradicted himself that the contract was terminated by effluxion of time despite the termination letter stating it was due to unavailability of funds.
21. Counsel submitted that if the contract was for one year why was the Respondent not terminated in December, 2018 and even if there was a new contract the same should end in December, 2020 yet the Respondent was terminated in November, 2020. Counsel relied on among others the case of *The Registered Trustees De La Salle Christian Brothers T/A St. Mary's Boys' Secondary School vs Julius D.M. Baini* [2017] KECA 425 (KLR) and submitted that fixed term contracts cannot be subject to renewability and as such no legitimate expectation of renewability. That automatically renewable fixed term contract is a contradiction in terms as it would subject the parties to an indeterminate employment contract.
22. Counsel submitted that the relationship between parties was not based on a fixed term contract as alleged by the Appellant and the same was not due to end of her contract. That from the termination letter, the reason for termination was attributed to lack of funds to sustain the Respondent. That this ground should therefore fall.
23. On the issue of whether the trial magistrate erred by awarding house allowance, payment of salary deductions and salary for November, 2020 counsel submitted that the Appellant testified that there were indeed salary cuts from April 2020. That the Appellant's witness testified that there was a memo sent to employees yet the alleged memo was never produced in court and the Respondent went on maternity leave in April, 2020. That there were no consultations as pertains the salary cuts, none was brought before the court and the Appellant did not produce any evidence to show that the cuts were necessary and that they were in a difficult place financially.
24. Counsel relied on among others the case of *Kenya Union of Commercial, Food and Allied Workers vs Tusker Mattresses Limited* (2020) where the court held that any variations of contracts during the Covid-19 pandemic required consultations with employees.
25. Counsel further submitted that for house allowance the Appellant in a bid to escape liability produced two new unsigned contracts for 2019 and 2020 that indicated inclusion of house allowance. That the terms of engagement should be those of 2018 contract since there was no evidence of service of these later contracts. Counsel relied on among other cases the case of *Nisha Nileshbai Nhasar v Kensal Limited* [2022] eKLR and submitted that an ambiguity in the contract must be resolved in favour of the employee and granted the employee house allowance from the time the contract started to termination.



26. On the issue of whether the trial magistrate erred by holding that the Respondent was unlawfully declared redundant and not expiration of fixed term contract and their impact, counsel submitted that the reason for termination was not on the basis of end of fixed term contract. That as correctly held by the trial court the reason for termination was allegedly due to unavailability of funds which is a different way to say redundancy as the same termination was at no fault of the Respondent as defined under section 2 of the Employment Act.
27. Counsel further submitted that the termination was at the initiative of the employer arising from limited/reduced unavailability of funds. That instead of justifying the termination through a declaration of redundancy, the Appellant just issued the Respondent with a notice of termination and only then brought up the issue of funds. That no notices were issued in line with section 40 of the Employment Act and such termination was unfair.
28. On the issue of whether the trial magistrate erred by granting 6 month's compensation instead of two months' compensation counsel submitted that the appellate court will not disturb an award of damages unless it can be shown that the trial magistrate proceeded on the wrong principles or that he misapprehended the evidence in some material respect. That award is discretionary under section 49 of the Act. That the Appellant did not bring evidence to show that the trial magistrate erred in principle in awarding 6 months as opposed to two months.
29. On the issue of whether the trial magistrate erred by awarding reliefs despite no evidence on record showing that the Respondent was terminated unfairly counsel relied on section 43 of the act while submitting that there was no valid reason for termination and due process was not followed i.e. no notice to show cause and no disciplinary hearing. That in the event of redundancy no notices were issued to the labour office or to the Respondent.
30. On the issue of whether the cross-appeal is merited, counsel submitted first on the issue of whether the magistrate erred in dismissing the order for general damages for discrimination based on pregnancy at Kshs 3,000,000/=, that the magistrate in the Judgment indicated that the Respondent was estopped from claiming discrimination having admitted that she had been dismissed on grounds of redundancy. That the Respondent particularized the issue of discrimination in her statement of claim but the court found that she was terminated on redundancy not discriminated after going for her maternity leave.
31. Counsel relied on the case of Central London Property Trust Ltd vs High Trees House Ltd [1947] 1 KB 130 and submitted that the doctrine of estoppel is only applicable where a party to a legal relationship makes a promise or representation to the other intended to affect their legal relationship and relied on by the other. One cannot thereafter be allowed to revert the previous position. There was no evidence that the Respondent made a promise or representation to the Appellant which it relied upon and altered its legal position for the Respondent to be estopped from asserting their rights.
32. Counsel submitted that section 29(1) provides that a female employee is entitled to 3 months' maternity leave with full pay. That upon completion of the leave the employee should resume job which she held on terms not lower than before proceeding on leave. That once an employee establishes a prima facie case the burden shifts to employer to show articulate, specific and non-discriminatory reasons for the disparity that is set out. The trial court erred by stating that it was the duty of the employee to assert this.
33. Counsel relied on among others the case of GMV v Bank of Africa Limited (2013) and submitted that there is no requirement for ladies claiming discrimination on pregnancy to be subjected to strict proof.
34. Counsel submitted that the Respondent went on leave in May 2020 and resumed work on in 9th August,2020 where she was paid half salary and only resumed full pay in October,2020. That during



the months preceding to the leave she was not accorded with any protective equipment despite being pregnant working in a hospital during Covid-19 pandemic. That the emails prove this. That the Respondent was targeted on her pregnancy and the failure of the Appellant to disprove this assertion solidifies that the Respondent was indeed discriminated and worthy of general damages.

35. On the issue of whether the magistrate erred in dismissing the order for general damages for exposure to a bad and dangerous working environment, counsel submitted that the trial magistrate held that the Respondent did not particularize her injuries on account of poor working conditions. That the fact that the Respondent did not get sick does not negate the fact that the rights were violated.
36. Counsel relied on the case of European Committee for Agriculture Training Rural Development (C.E.F.A) Kenya v Moses Muriuki Matiri [2015] eKLR and submitted that Protective Gear was solely the duty of the Company and no liability will be given to the employee.

Determination

37. The court has considered the appeal and the cross appeal herein with the grounds raised, submissions filed by the parties herein and authorities relied and observes that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its own findings and conclusions as held in Court of Appeal for East Africa in Peters –vs- Sunday Post Limited [1958] EA 424. The appropriate standard of review established in cases of appeal can be stated in three complementary principles:
 - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.
38. The Judgment of the trial court was that judgment was entered in favour of the Respondent against the Appellant as follows: -
 - a. A declaration is hereby issued that the Claimant's termination of employment by the Respondent was in violation of section 40 of the Employment Act and therefore unfair.
 - b. The Claimant is awarded one month pay in lieu of notice at Kshs 50,003
 - c. The Claimant is awarded five months compensation for unlawful termination at Kshs 250,015
 - d. The Claimant is awarded salary deducted for the months of June,2020 to October,2020 at Kshs 101,215
 - e. The Claimant is awarded house allowance at Kshs 247,514
 - f. The Claimant is awarded a certificate of service.
 - g. The Claimant is awarded severance pay at Kshs 50,003
 - h. The Claimant is awarded 8 days salary for November,2020 at Kshs 13,335
 - i. The prayer for general damages are dismissed.



- j. The prayer seeking to make the Respondent to pay all statutory deductions to relevant authorities is dismissed.
 - k. The Claimant is awarded the costs of the suit at court rates.
 - l. The awards are subject to statutory deductions.
39. Having considered the appeal, the cross appeal the evidence on record and the submissions on record the court identifies the issues for determination as: –
- a. Whether the trial magistrate erred in finding that the Respondent was unlawfully terminated.
 - b. Whether the trial court erred in finding that the Respondent was not discriminated on account of pregnancy and she was not subjected to poor working conditions hence not entitled to general damages.
 - c. Whether the trial court erred in awarding the reliefs awarded to the Respondent.

Whether the trial magistrate erred in finding that the Respondent was unlawfully terminated.

40. The notice of termination stated that the Respondent was terminated due to lack of funds. The Respondent on the other hand alleged that the Respondent was on one-year fixed term contracts where her contract ended on effluxion of time. That the Respondent contract was to expire in December, 2020 and she was terminated in November, 2020 upon being offered one-month salary in lieu of notice.
41. The trial court held that the Respondent was terminated on account of redundancy where section 40 was not followed hence unfair termination. The trial court also found that the Respondent being on fixed term contracts her contract could only terminate legally by effluxion of time. The respondent was terminated before the end of her term contract for the reason that there were no funds and paid in lieu of notice. This court therefore agrees with the trial court on the fact that the Respondent was terminated on account of redundancy as per proper reading of section 2 of the Employment Act which provides as follows: -

means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.

42. This court notes that the above reason falls within the definition of redundancy since it was on the initiative of the Appellant and the Appellant clearly stated that she did not breach any of the Appellant’s terms of service yet was terminated. The court has stated severally that even in cases of redundancy the reason ought to be valid as provided for under section 43 of the Employment Act and the employee given a right to be heard under section 41 of the Employment Act. Failure to observe these would lead to a conclusion that the termination was unfair under section 45 of the Employment Act.
43. In Kenya Airways Limited VS. Aviation and Allied Workers Union of Kenya and 3 Others (2014) eKLR, the Court of Appeal pronounced itself as follows:

“Thus, redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with a fair procedure. As Section 43(2) provides, the



test of what is fair reason is subjective. The phrase “based on operational requirements of the employer” must be construed in the context of the statutory definition of redundancy.

What the phrase means, in my view, is that while there be underlying causes leading to a time redundancy situation such as reorganization, the employer must nevertheless show that the termination is attributable to redundancy – that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment.”

44. It was at the initiative of the Appellant to terminate the employment of the Respondent due to lack of funds and the Respondent was not at fault. The Appellant had the duty to prove the reason of unavailability of funds at that particular moment by producing financial records but it did not. This court also agrees with the trial court finding that since the 2020 contract was not signed by the Respondent it could not be binding upon her and the only contract in place was the 2018 contract executed by parties. That this also meant that the 2018 contract if valid for one year was automatically renewed every year. The Appellant’s allegations that the Respondent was offered one-month salary in lieu of notice cannot stand so long as the reason of unavailability of funds was not proved.
45. Regarding the process undertaken by the Respondent in terminating the appellant’s service, the Court has held severally that even in redundancy the procedure under section 41 of the Employment Act on the right to be heard has to be followed. The court notes that the Appellant did not follow the right procedure in declaring the Respondent redundant. The Respondent was given notice of termination but not redundancy notice. This was presumably done to avoid the requirements of the Act regarding termination on account of redundancy.
46. In conclusion therefore, the court agrees with the trial Court’s finding that the Respondent was unfairly terminated on grounds of redundancy. The Appellant did not adhere to section 40 of the Employment Act when declaring the respondent redundant.
47. The Appellant alleged that the Respondent was terminated on account of absconding duties but did not provide any evidence in support or justify this same ground. This defence was in the Court’s view an afterthought not backed by any evidence.

Whether the trial court erred in finding that the Respondent was not discriminated on account of pregnancy and she was not subjected to poor working conditions hence not entitled to general damages.

48. The Respondent alleged that the trial court erred in finding that she was not discriminated, that being terminated on account of redundancy she was estopped from claiming discrimination and that she was not entitled to general damages. That the Respondent did not plead any injuries sustained due to poor working conditions.
49. Discrimination is a violation of a fundamental constitutional right. Where it is alleged, the claimant ought to pleaded the same with precision as was emphasized in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR. The Respondent claims to have been discriminated on account of pregnancy but did not plead specifically how she was discriminated over the same. She stated that she went on maternity leave on May,2020 and resumed on August 2020. That salary was deducted between June to October,2020 past the time she was on maternity leave.
50. On the issue of poor working conditions, the Respondent alleged that she was not provided with protective gear preceding her leave. Whereas it is the duty of the employer to provide protective gear this



court notes that face masks were found in the market readily and the Respondent did not demonstrate how the Appellant failed on its part to provide the same.

51. The court therefore agrees with the lower court that discrimination was not properly pleaded and the injuries due to poor work condition were not properly demonstrate to be entitle the respondent to general damages. These grounds in the cross Appeal therefore fail.

Whether the trial court erred in awarding the reliefs awarded to the Respondent.

52. The Appellant challenges the reliefs awarded to the Respondent by the trial court. On one-month salary in lieu of notice the Respondent was entitled to the same by dint of section 40 of the Employment Act. On the award of five months compensation for unfair termination the court notes that the same is provided for under section 49 of the Employment Act upon finding that termination was unfair. This award is discretionary and this court can only interfere with the exercise of such discretion if there is some mistake in making the award. Newbold P in *Mbogo v Shah* [1968] EA 93 while determining the principles that guide the court on interference with the exercise of judicial discretion held that:

“... a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”

53. Whereas this court notes that the trial magistrate contradicted herself by awarding six months' compensation in one paragraph and another paragraph two months' compensation and went on to award five months as the final order this court will adopt the five months given in the final order. The trial court gave its reasons for the exercise of the said discretion and this court does not deem it fit to interfere with the same since section 49(4) of the Employment Act gives out the considerations the court should take while awarding the damages.
54. On the prayer for house allowance as held by the trial court that the applicable contract was that of 2018 which did not provide for the said house allowance then the Respondent was entitled to the same. In addition, this court adds that this a continuing injury where the Claimant must file their claim within 12 months as per section 90 of the Employment Act. In this case the Respondent was terminated in November, 2020 and she filed the claim in the same year hence it was a valid claim. This court upholds this award. The unsigned contracts for 2019 and 2020 which tried to allude that the salary was inclusive of house allowance were introduced by the Appellant too late and in any evidence had no probative value.
55. On the award of salary deducted from June-October,2020 this court as well agrees with the trial court that the Respondent was entitled to the same since she was not consulted before the same were made. The courts have emphasized that before salary reductions during COVID-19, employees had to be consulted and agree to the same. This was the position as held in the case of *Kenya Union of Commercial, Food and Allied Workers vs Tusker Mattresses Limited* (2020) eKLR relied on by the Respondent's counsel. The Respondent was also entitled to the 8 days salary for November, 2020 since no evidence was tendered that she was paid.
56. On the prayer for severance pay this court as well agrees with the trial court since this is an entitlement under Section 40 (1)(g) of the Employment Act. The Appellant's allegations that the court cannot award both compensation for unfair termination and severance cannot stand since the two are



provided for by the Employment Act. Once an employee is declared redundant, she is entitled to severance pay under section 40 (1) (g) of the act and once the court finds that the termination was unfair the employee is entitled to damages for unfair termination under section 49 of the Act.

57. The Respondent was also entitled to certificate of service from the Appellant. This court agrees with the trial court finding on this assertion since it was her entitlement under section 51 of the Act. In addition, the Respondent should clear with the Appellant if not already, to get her certificate of service.
58. In the upshot the Appeal and the Cross appeal are found unmerited and are hereby dismissed with no orders as to costs.
59. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025

DELIVERED VIRTUALLY THIS 28TH DAY OF FEBRUARY, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

