



Sukhija v NMC Fertility Point Kenya Limited (Employment and Labour Relations Cause E262 of 2022) [2025] KEELRC 257 (KLR) (4 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 257 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E262 OF 2022**

**HS WASILWA, J
FEBRUARY 4, 2025**

BETWEEN

DR SARIT SUKHIJA PETITIONER

AND

NMC FERTILITY POINT KENYA LIMITED RESPONDENT

JUDGMENT

1. The Petitioner instituted this suit by a Petition dated 25th March 2021, alleging unlawful termination of employment by the Respondent. She contends that she was employed under a fixed-term contract dated 5th June 2018 as an IVF Consultant, with a probation period of six months and a subsequent transition to permanent employment. Her remuneration was set at USD 11,000 per month, along with additional allowances in both US Dollars and Kenya Shillings. The contract provided for termination by either party through a three-month written notice or payment in lieu of such notice, in accordance with the *Employment Act*, 2007.
2. The Petitioner avers that after serving diligently for over two and a half years, the Respondent unilaterally altered her remuneration terms in March 2020, reducing her minimum guarantee and shifting her payment structure to a per-case basis, contrary to the employment contract. Additionally, the Respondent allegedly coerced her to work exclusively at their facility as a condition for renewing her medical license, an assurance which was later rescinded.
3. The Petitioner further asserts that on 15th December 2020, she was unlawfully dismissed without a notice to show cause, and police officers were stationed at her workplace to bar her from entry. She was neither given the requisite three-month notice nor paid in lieu thereof. Additionally, she claims that the Respondent wrote to the Kenya Medical Practitioners & Dentists Board (KMPDB) on 22nd December 2020, making false allegations against her, which resulted in the revocation of her practicing certificate.



4. She contends that the Respondent maliciously accused her of engaging in private medical practice against company policy and further denied her a National Occupational Classification (NOC), preventing her from seeking alternative employment while threatening her with deportation. The Petitioner argues that her termination was malicious, untimely, and unlawful, contravening the provisions of the *Employment Act*, 2007. She relies on various legal principles, including the statutory requirement for notice of termination and fair administrative action.
5. Despite issuing a notice of intention to sue, the Respondent has allegedly refused to settle her claims, prompting the present suit.

Reliefs Sought:

1. A declaration that the Respondent's dismissal of the Claimant from employment was illegal and unlawful, and therefore, the Claimant is entitled to payment of her terminal dues and compensatory damages.
 2. Three months' salary in lieu of notice:
Kshs. 2,666,664/- US\$ 24,000/-
 3. Twelve months' damages for unlawful dismissal:
US\$ 96,000/-
Kshs. 10,663,068/-
 4. An order for payment of the Claimant's terminal dues, including:
 - i. Salary variable for June – December 2020: US\$ 20,500/-
 - ii. Kenya Shillings salary variable for June – October 2020: Kshs. 888,589.47
 - iii. December 2020 salary: US\$ 8,000/-
 - iv. Unpaid leave (25 days): US\$ 6,666.57
 - v. Annual leave air ticket:
2019: US\$ 640/-
2020: US\$ 505/-
 5. An order for the Respondent to pay the cost of this suit plus interest thereon.
6. The Petitioner prayed for:
1. An order of injunction restraining the Respondent from making and publishing any defamatory and malicious statements concerning the Claimant to various government agencies following her unlawful termination.
 2. General, punitive, and exemplary damages for defamation and malicious statements.
 3. Special damages of:
US\$ 150,311.67
Kshs. 14,218,321.47



4. A declaration that the Respondent's dismissal of the Claimant from employment was illegal and unlawful, and therefore, the Claimant is entitled to payment of her terminal dues and compensatory damages.
5. Costs of this suit.
7. The Claimant swore an affidavit dated 25th March 2021, verifying the contents of the Memorandum of Claim. In the affidavit, the Claimant, Dr. Sarita Sukhija avers that she is competent to swear the affidavit on her own behalf. She confirms that she has read and understood the facts stated in the Memorandum of Claim and verifies them to be true. She further states that the contents of the affidavit are true to the best of her knowledge and belief.
8. The Claimant, Dr. Sarita Sukhija, in her witness statement dated 25th March 2021, states that she was employed by the Respondent on a fixed-term contract dated 5th June 2018 as an IVF Consultant. Upon securing a work permit, a Kenya Medical Practitioners & Dentists Board (KMPDB) Practicing Certificate, and housing, she accepted the appointment and reported for duty on 16th August 2018. Her contract provided for a six-month probation period, after which she would be confirmed on permanent terms.
9. The Claimant states that in March 2020, the Respondent, in partnership with Bliss Management, unilaterally altered her terms of payment, reducing her minimum guarantee of USD 11,000 as set in her employment contract and revising her remuneration to be based solely on IVF procedures. Additionally, the Respondent, through office emails, introduced policies allowing outside outpatient departments (OPDs), thereby affecting her earnings from surgeries. During March and April 2020, the Respondent's facility received patients under AON Minet Insurance who required surgeries to be performed at Mediheal Hospital. With the Respondent's knowledge, she obtained visiting rights at Mediheal to conduct laparoscopic hysteroscopy procedures.
10. The Claimant further states that her employment contract was set to expire in December 2020, and she had received assurances from the Respondent that it would be renewed. However, the Respondent reneged on this assurance, forcing her to personally renew her KMPDB registration, which was tied to her employment contract. On 7th December 2020, the Respondent informed her of their intention not to renew her contract and instead terminate it. This, according to the Claimant, was a violation of Clause 7.1 of her contract, which required either party to give three months' notice or pay salary in lieu thereof, in accordance with the *Employment Act*, 2007.
11. The Claimant avers that the Respondent confiscated her office hard drive, locked her out of official email correspondences, and, on 14th December 2020, summoned her to a meeting with the CEO, Mr. Vikramjit Singh, Vice President, and HR, Mr. Vishal Sharma, and one Ms. Annabelle. During the meeting, she was summarily dismissed and instructed not to return to the office. She alleges that the Respondent coerced her to return to India, threatened her with deportation, and issued a defamatory No Objection Certificate (NOC) to sabotage her chances of securing new employment. Further, the Respondent wrote to the KMPDB requesting the revocation of her registration on false claims that she was practicing privately at Mediheal Hospital in breach of her contract and work permit.
12. The Claimant denies the Respondent's allegations that she was engaged in dual employment, stating that Myra IVF Centre was set up and registered under a different work permit, and its operations did not breach her contract. Despite making demands and issuing a notice of intention to sue, the Respondent has refused to pay her dues or issue a valid NOC. She asserts that her termination was malicious, unlawful, and contrary to the provisions of the *Employment Act*, 2007. She maintains



that her dismissal was unfair, premeditated, and aimed at unlawfully terminating her services without justification. She prays for compensation for unfair dismissal.

Claimant's Written Submissions

13. The Claimant filed written submissions dated 25th November 2024, seeking various reliefs against the Respondent, including an injunction restraining the Respondent from making defamatory statements, general, punitive, and exemplary damages for defamation, a declaration that her dismissal was unlawful, special damages amounting to USD 150,311.67 and Ksh. 14,218,321.47, and compensation for unfair termination.
14. The Claimant was employed by the Respondent on a fixed-term contract dated 5th June 2018 at a monthly salary of USD 11,000. On 20th March 2020, the parties entered into an addendum agreement, reducing her salary to USD 8,000 and allowing her to offer outpatient services outside the clinic under the company's work permit, provided she bore any resulting liability. The Claimant states that despite this agreement, the Respondent frustrated her employment by refusing to renew her foreign doctor's license, despite repeated requests.
15. On 14th December 2020, the Claimant was summoned to the CEO's office and informed that she should immediately leave the premises and return to India. Thereafter, the Respondent wrote to the Kenya Practitioners Medical and Dentists Council, allegedly with the intention of having her deported and preventing her from practicing in Kenya. The Claimant, having faced continued frustration, wrote an email on 18th December 2020 detailing her grievances and seeking payment of her dues. She contends that she was constructively dismissed before her contract's expiration on 1st January 2021. The Respondent subsequently failed to pay her terminal dues.
16. The Claimant argues that her contract, which was to run until 1st January 2021, gave the employer discretion to extend or renew it. She states that as early as June 2020, she had inquired about her work permit extension and was assured by the Country President that there was no reason it would not be renewed. The Claimant contends that the Respondent's defense is an afterthought, as no evidence was presented to show that she breached her contract. She asserts that the Respondent sought to terminate her employment despite her dedicated service.
17. The Claimant relies on the case of Nathan Ogada Atugaga v David Engineering Limited (2015) eKLR, where the Court held that constructive dismissal occurs when an employer makes working conditions intolerable, forcing an employee to resign. The Claimant submits that her dismissal was constructive, and the Respondent's failure to respond to her letter dated 18th December 2020 confirms this. She prays for compensation for unlawful dismissal, seeking 12 months' salary at USD 8,000 per month, amounting to USD 96,000, and three months' salary in lieu of notice, totaling USD 24,000.
18. The Claimant further seeks additional payments, including variable pay from June to December 2020 amounting to USD 20,500, December 2020 salary of USD 8,000, unpaid leave for 25 days totaling USD 6,666.57, and an annual allowance of USD 505, bringing the total claim for special damages to USD 150,311.67. Additionally, she claims contractual allowances, including fuel expenses of USD 960, house and utility expenses of USD 18,000, phone expenses of USD 480, and travel tickets of USD 650, bringing the total amount sought to USD 170,401.67.
19. The Claimant submits that under Clause 7.2 of her employment contract, her net salary was to be paid after all statutory deductions, which were to be borne by the employer. As such, she argues that she is entitled to the full amount claimed, net of PAYE. She prays for the total sum of USD 170,401.67, along with costs of the suit and interest from the date of filing until full payment.



20. The Claimant concludes that the Respondent constructively dismissed her by preventing her from completing her contract term. She submits that she has proved her case on a balance of probabilities and prays that the Court finds in her favour and grants the reliefs sought in the statement of claim dated 25th March 2024.

Respondent's Case

21. The Respondent filed a response dated 29th April 2021 to the Statement of Claim, denying the allegations made by the Claimant and praying that the suit be dismissed with costs. The Respondent admits that the Claimant was employed on a fixed-term contract for 30 months, running from 1st July 2018 to 1st January 2021, and that the contract was varied by mutual consent through an addendum executed on 20th March 2020, reducing the Claimant's salary from USD 11,000 to USD 8,000. However, the Respondent denies the Claimant's assertions regarding unlawful termination, stating that her employment ended due to the effluxion of time.
22. The Respondent contends that the Claimant failed to satisfactorily perform her duties and was found to have engaged in private medical practice at Mediheal Hospital and her own clinic during the subsistence of her contract, which was a breach of her employment terms and work permit conditions. The Respondent denies any wrongful termination or unlawful actions, asserting that the Claimant's contract simply expired on 1st January 2021. The Respondent further states that the Claimant was paid all her salaries when due and is not entitled to the claim for three months' unpaid salary.
23. The Respondent asserts that its actions regarding the Claimant's medical practice were justified and that it had a duty to report her unauthorized private practice to the regulatory authority. It denies any role in the revocation of the Claimant's medical license, stating that the Kenya Medical Practitioners & Dentists Board conducted its own investigations and took appropriate action. The Respondent further argues that the Claimant has not cleared with the company to receive her terminal dues and has failed to collect her certificate of service, which remains ready for collection.
24. Additionally, the Respondent states that the Court lacks jurisdiction to hear the matter, citing paragraph 14 of the Claimant's employment contract, which it claims ousts the Court's jurisdiction. The Respondent therefore prays that the Claimant's suit be dismissed with costs and interest as the Court may determine.
25. The Respondent filed a witness statement dated 9th October 2023, sworn by Rufus Maina, the Director of Strategic Initiatives and Legal, who stated that he was well-versed with the facts of the case and competent to testify on behalf of the Respondent. He confirmed that the Claimant was appointed as an IVF Consultant on a fixed-term contract dated 5th June 2018, which was to run for 30 months from 1st July 2018 to 1st January 2021. The contract contained various terms, including that the Claimant would devote her full time and attention to the Respondent's business, work eight hours a day for six days a week, and be bound by a confidentiality clause. Additionally, on 24th August 2020, the parties executed a Non-Disclosure Agreement (NDA), which prohibited the Claimant from disclosing or using confidential information without the Respondent's prior written consent.
26. Since the Claimant was a foreign national, the Respondent facilitated the issuance of a Special Pass and Work Permit Class D on 11th December 2018 and a Temporary License for Foreign Doctors from the Medical Practitioners and Dentists Board on 17th December 2018. On 1st March 2020, the parties executed an addendum to the contract, revising the Claimant's salary from USD 11,000 to USD 8,000 and permitting her to conduct outpatient services during non-office hours while referring all IVF cases to the Respondent, subject to compliance with Kenyan law. The contract also required the Claimant



- to conduct herself professionally at all times. However, the Respondent received complaints regarding her improper conduct, including being disrespectful and abusive towards colleagues, as evidenced in an email dated 11th December 2020.
27. The Respondent further alleged that the Claimant attempted to breach her contract and the NDA by seeking to disclose confidential information to third parties and requesting access to information she was not authorized to have, as evidenced in an email dated 9th November 2019. On 14th December 2020, the Respondent requested the Claimant to take her annual leave since her medical license had expired and had not been renewed. The Claimant was informed that continuing her medical practice at the Respondent's facility without a valid license would be unlawful. At the same time, the Respondent sought confirmation from the Claimant regarding whether she was agreeable to the proposed new terms for a possible contract renewal.
 28. The Claimant, in an email dated 15th December 2020, stated that she was not interested in renewing her contract upon its expiry on 31st December 2020. This position was later denied by the Respondent in an email dated 17th December 2020. Further emails from the Claimant confirmed her intention to resign and not renew her contract post-31st December 2020. Upon learning of her decision not to renew her contract, the Respondent discovered that the Claimant had engaged in unauthorized medical practice at Mediheal Hospital and had also established her own private practice while still under the Respondent's employment. Consequently, the Respondent lodged a complaint with the Medical Practitioners & Dentists Board on 22nd December 2020, which led to the cancellation of the Claimant's Temporary Specialist License following investigations.
 29. The Respondent maintains that it did not terminate the Claimant's employment but that her contract expired on 1st January 2021, in line with its fixed-term nature. Given that the contract provided the Respondent with sole discretion on renewal, it exercised its right not to extend the Claimant's tenure. Therefore, the Respondent denies liability for any claims of unlawful dismissal or salary in lieu of notice. Additionally, the Claimant has failed to clear with the Respondent to facilitate the payment of her terminal dues, as evidenced in the Respondent's terminal dues calculations. The Claimant has also not collected her certificate of service, which remains ready for issuance.
 30. In light of the foregoing, the Respondent prays that the Claimant's memorandum of claim be dismissed with costs.

Respondent's Written Submissions

31. The Respondent filed its final submissions dated 29th November 2024, arguing that the Claimant's employment contract was a fixed-term contract that automatically expired upon the lapse of the contractual period. The Respondent cited the Court of Appeal decision in *Trocaire v Catherine Wambui Karuno* [2018] KECA 769 (KLR), which affirmed that once a fixed-term contract ends, the employer has no obligation to justify termination on other grounds beyond the effluxion of time. The Respondent emphasized that the Claimant's contract explicitly stated that it would expire on 1st January 2021 and that before its expiry, the Claimant unequivocally informed the Respondent that she was not interested in having it renewed, as evidenced in her emails dated 15th December 2020 and 31st December 2020. The contract granted the Respondent sole discretion to extend or renew it, and since the Claimant had expressed her lack of interest in renewal, the contract terminated automatically upon its expiry.
32. The Respondent detailed the employment terms, including the Claimant's obligation to devote her full time and attention to her duties, work under specified hours, and abide by a confidentiality clause. The parties later executed an addendum on 1st March 2020, revising the Claimant's salary downward



and allowing her to conduct outpatient services during non-office hours under the Respondent's work permit. Since the Claimant was a foreign national, the Respondent facilitated her work permit and temporary medical license. However, when the Claimant's medical board license expired in December 2020, the Respondent requested her to take leave while working on its renewal. At the same time, the Respondent sought confirmation on whether she was agreeable to new contract terms. The Claimant responded on 15th December 2020, stating she was not interested in renewing her contract, which was further confirmed in subsequent emails.

33. Upon learning of the Claimant's intention not to renew her contract, the Respondent discovered that she had engaged in unauthorized medical practice at Mediheal Hospital and had also opened a private practice while still under the Respondent's employment, in violation of her contract and work permit conditions. As a result, the Respondent lodged a complaint with the Medical Practitioners and Dentists Board on 22nd December 2020. Following investigations, the Board canceled the Claimant's temporary specialist license due to her unlawful practice at Mediheal Hospital. The Respondent contends that this was not a case of unlawful termination but rather the natural expiry of a fixed-term contract, as provided under Clause 3.2 of the employment agreement.
34. During the hearing, the Respondent's witness, Rufus Maina, the Director of Strategic Initiatives and Legal, testified that the Claimant had no intention of renewing her contract and had already secured employment elsewhere, as evidenced by her obtaining a license to practice at Myra IVF Clinic. He confirmed that the Respondent had renewed the Claimant's work permit from 13th December 2020 and was working on renewing her medical license when she chose not to renew her contract. He also testified that upon discovering her unauthorized medical practice, the Respondent lodged a complaint with the Board, leading to the revocation of her license.
35. The Claimant, Dr. Sarita Sukhija, testified as the sole witness in her case. During cross-examination, she admitted that she was employed on a fixed-term contract, that her contract was for 30 months, and that her employer was the Respondent. She further admitted that the Respondent had been negotiating her contract terms for a possible renewal, had renewed her work permit, and had requested her to proceed on leave after her medical license expired. The Claimant confirmed that she had obtained a license to practice at Myra IVF Clinic on 17th December 2020 while still holding a work permit with the Respondent. She also admitted to performing surgeries at Mediheal Hospital despite her work permit restricting her employment to the Respondent. The Respondent submitted that these actions constituted a violation of the work permit and employment contract.
36. The Respondent argued that the Claimant's allegations of constructive dismissal were unsubstantiated. Constructive dismissal, as defined in Black's Law Dictionary, 10th Edition, occurs when an employer creates intolerable working conditions, leaving an employee with no option but to resign. The Court of Appeal in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* (2015) eKLR set out the elements required to establish constructive dismissal, including the existence of a fundamental breach by the employer, the employee's resignation in response to that breach, and the resignation occurring without undue delay. The Respondent contended that none of these elements were met in the present case. The Claimant voluntarily chose not to renew her contract, and there was no breach by the Respondent that could justify a claim of constructive dismissal.
37. The Respondent further submitted that the Claimant had failed to establish a case of constructive dismissal, as her contract expired by effluxion of time rather than wrongful termination. Relying on the contractual test approach, the Respondent argued that the Claimant bore the burden of proving that the employer had fundamentally breached the contract. The Respondent contended that the Claimant's assertion that she was forced to resign due to being instructed to leave Kenya was misleading, as she was merely advised not to report to work after her medical license expired, in accordance with



- the law. The Respondent maintained that it had acted lawfully and had even been negotiating the Claimant's contract renewal, as evidenced by its official communications and the renewal of her work permit.
38. The Respondent also asserted that it had every right to report the Claimant's breach of contract and work permit conditions to the Medical Practitioners and Dentists Board. The Claimant had been found to have engaged in in-patient services at another facility, contrary to the agreed terms allowing only outpatient services during non-office hours. The work permit explicitly stated that the Claimant's place of work was with the Respondent, not Mediheal Hospital. Furthermore, at the time of her resignation, the Claimant had already obtained a medical license for Myra IVF Clinic, which she failed to disclose to the Respondent. The Respondent submitted that the Claimant had no intention of renewing her contract and merely disguised her exit as constructive dismissal.
 39. The Respondent emphasized that constructive dismissal requires an employer's conduct to have been so unreasonable that an employee had no choice but to resign. Citing *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* (2015) eKLR, the Respondent submitted that for a claim of constructive dismissal to succeed, the employee must prove a fundamental breach by the employer, a resignation in response to that breach, and an immediate resignation after the breach occurred. The Respondent argued that the Claimant had failed to meet these requirements, and her contract simply expired on 1st January 2021.
 40. The Respondent cited *Samwel Juma Ojwang v Equator Bottlers Limited* (2021) KEELRC 1908 (KLR), where the court dismissed a claim for unfair termination after finding that the claimant's contract had expired by effluxion of time. The court held that the claimant had failed to prove that any employer's representative had informed him that his services were no longer required. Similarly, in *Peter Ochieng Okello v Metal Tin Makers Ltd* (2020) KEELRC 1181 (KLR), the court found that a contract that explicitly states its expiry date does not require any termination action from the employer, and failure to renew the contract does not constitute unfair termination. The Respondent submitted that the Claimant was well aware that her contract was fixed-term and that she had expressed her disinterest in renewing it.
 41. On the issue of the reliefs sought, the Respondent argued that the Claimant was not entitled to an injunction restraining the Respondent from making defamatory statements, as no evidence of defamation had been provided. The Respondent maintained that it had a right to report professional misconduct, as the Claimant had violated her work permit by practicing at another facility. Citing *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR, the Respondent argued that the Claimant had failed to establish the conditions required for an injunction.
 42. Regarding the claim for general, punitive, and exemplary damages for defamation, the Respondent submitted that this remedy is not provided for under Section 49 of the *Employment Act*. Citing *Simba Corporation T/A Acacia Premier Hotel v Harun Kimtai Kirui* (ELRCA/E020/2023), the Respondent argued that awarding damages for loss of employment outside statutory provisions would amount to unjust enrichment. Additionally, the Claimant had not met the legal threshold for proving defamation as outlined in *James Njagi Joel v Junius Nyaga Joel* (2020) eKLR, which requires proof that the statement was defamatory, referred to the plaintiff, was published by the defendant, and was false.
 43. On the claim for terminal dues, the Respondent acknowledged an outstanding amount of Kshs. 5,287,335 or USD 50,840, which included leave days and salary variables. However, the Claimant had not cleared with the Respondent, which was a prerequisite for processing her final dues. The Respondent disputed the Claimant's claim for airfare reimbursements, arguing that special damages must be pleaded and proved, and the Claimant had not provided any evidence of air tickets.



44. On compensatory damages, the Respondent submitted that the Claimant was not entitled to damages equivalent to 12 months' salary since her contract expired naturally and was not unlawfully terminated. The Respondent also opposed the claim for three months' salary in lieu of notice, arguing that no notice was required upon the expiry of a fixed-term contract.
45. Regarding the claim for special damages amounting to USD 150,311.67 and Kshs. 14,218,321.47, the Respondent submitted that the Claimant had failed to plead and strictly prove these amounts, as required by law. The Respondent cited *Hahn v Singh (1985) KLR 716*, where the Court of Appeal held that special damages must be specifically pleaded and strictly proved.
46. In conclusion, the Respondent submitted that the Claimant's contract expired by effluxion of time, and her claim for constructive dismissal was baseless. The Claimant had secured employment elsewhere before her contract expired and had sought to disguise her departure as unfair termination. The Respondent prayed that the claim be dismissed with costs to the Respondent.
47. I have examined all the evidence and submissions of the parties herein. From the evidence herein, the claimant was engaged by the respondents vide a fixed term contract dated 5/6/2018 which contract was to run from 1/7/2018 for a period of 30 months and was to expire automatically on 1/1/2021 unless terminated earlier or for other reasons but could be extended further at the sole discretion of the employer.
48. Based on this contract the claimant served the respondents faithfully at the remuneration of 11000 USD per month to be paid in Kshs.
49. This contract could only be modified as provided for vide he *Employment Act* 2007 laws of Kenya. It is also not in doubt that the respondents reported the claimant to KMPDU vide a letter of 22/12/2020 to the effect that she was running a private medical practice contrary to the contract between her and the respondent and as per the work/resident permit No 0797623 supplied to the claimant and paid for by the respondent. It was also confirmed from evidence on record that the claimant performed some private surgeries at Mediheal hospital during the subsistence of her employment with the respondent. It is therefore evidence that the claimant performed some work outside her employment with the respondent which was clearly against her work permit and contract with the respondent.
50. The contract between the claimant and the respondent could be renewed upon both parties agreeing and especially at the discretion of the respondent. The respondents chose not to renew the contract. This being a fixed term contract, the respondents could not be compelled to renew it. They were also not obligated to give any notice to the claimants.
51. The claimants aver breach by the respondent for not renewing the contract. There is no breach in my view as this contract expired by effluxion of time and the claim for breach is unfounded and is disregarded.
52. The claimant also sought to be paid 3 months' salary as notice pay. This being a contract that expired due to effluxion of time and not due to a dismissal or termination, the claim for notice pay is not also viable.
53. The claimant sought to be paid her terminal dues including salary due to her due to the salary variable where her salary was reduced from 11000 USD to 8000 amongst other dues. The contract between the claimant and respondent indicated that her salary was going to be 11000 USD per month. Vide a contract between the claimants and respondents dated 20/3/2020, an addendum to the agreement of 5/6/2018 was entered into reducing the remuneration of the claimant from 11000 USDs to 8000 USDs. Under this contract:



Addendum to Employment Agreement dated 5th June 2018

This Addendum to Employment Agreement (the "Agreement") is made and entered into on March 1st, 2020 by and between NMC Fertility Kenya Limited (the "Company and Dr. Sarita Sukhija ("Employee").

The Employment Contract dated 5th June 2018 is attached herewith and made a part this document.

The parties, for good consideration, hereby agree as follows:

1. Job Position and Place of Work shall be modified to read and include as follows:

- Clause 2:
- 1.1 The employee shall be allowed to practice outpatient services outside the clinic during non-office hours under the company's work permit and within the Kenyan jurisdiction and Kenyan law. However, any liability arising out of the same shall be borne entirely by the employee.
 - 1.2 The employee shall refer all IVF procedure cases to NMC Fertility Kenya Ltd. No compliance will be a breach of contract which will be tantamount to gross misconduct

2. Remuneration shall be modified to read and include as follows:

- Clause 7:
- 2.1 shall be deleted to include:
Clause 7.1 With effect from 1st March 2020 the employee shall receive a monthly salary of United States Dollars Eight Thousand (USD. 8,000) net of tax which shall be paid on or before the 5th day of next month.
 - 2.2 Bonus
Will be as per attached Annexure A which will be paid on quarterly basis net of tax on or before 10th day of the following month.
No other terms or conditions of the above mentioned contract shall be negated or changed as a result of this here stated addendum.

54. The agreement was signed by the parties and the issue of reduction or remuneration was also a case on point which also allowed the claimant to carry out outpatient services outside the clinic during non office hours but refer all IVF procedure cases to the respondent.
55. The claim that the claimant's salary was unilaterally reduced by the respondent is therefore not correct and the claimant is therefore not entitled to payment of salary variables made during the said period.
56. As concerns leave, the claimant sought to be paid 25 days leave. There is no indication that the claimant went on leave during the said period. I will therefore award her 25 days leave days earned as prayed at USDS 6666.57.
57. As for the annual air ticket to India, the claimant sought to be paid 640 and 505 USDS for 2019 and 2020 respectively. The claimant is indeed entitled to this payment as per Annex 1 of the employment contract which I award at 1145 USD for the two years. The total therefore awarded to the claimant is USD 7811.57 plus costs of this suit and interest at court rates w.e.f the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY FEBRUARY, 2025.



HELLEN WASILWA
JUDGE

