



Birir v National Water Harvesting & Storage Authority & another (Cause E264 of 2024) [2025] KEELRC 2241 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2241 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E264 OF 2024**

**SC RUTTO, J
JULY 25, 2025**

BETWEEN

FLORENCE CHERONO BIRIR CLAIMANT

AND

**NATIONAL WATER HARVESTING & STORAGE AUTHORITY 1ST
RESPONDENT**

**BOARD OF DIRECTORS, NATIONAL WATER HARVESTING & STORAGE
AUTHORITY 2ND RESPONDENT**

JUDGMENT

1. It is common cause that the Claimant was employed by the 1st Respondent on 24th November 1994 as a copy typist III and rose through the ranks to the position of Chief Assistant Office Administrator. That is the position the Claimant held at the time of her termination from employment on 21st November 2022.
2. According to the Claimant, she fulfilled her responsibilities with dedication and integrity, contributing significantly to the enhancement of the 1st Respondent's organisational efficiency and service delivery capabilities. She further avers that she has been a devoted and diligent civil servant for over 30 years during which she maintained an exemplary record devoid of any disciplinary incidents, warnings or negative appraisals from the Respondents.
3. It is the Claimant's view that her dismissal from employment was unlawful, unprocedural and malicious as it was concluded by an illegally constituted Staff Advisory Committee not recognised in law and in her absentia. That further, her right to defend herself was egregiously violated as she was subjected to disciplinary action without being afforded an opportunity to be heard.
4. It is against this background that the Claimant seeks the following reliefs against the Respondents;



- a. A declaration that the termination was wrongful, unfair and unlawful.
 - b. As a preference, immediate reinstatement to the position of Chief Assistant Office Administrator without loss of salary, benefits and or allowances.
 - c. That upon reinstatement, the Claimant be paid back pay salaries from the date her salary was illegally withheld in May 2022 to date at the rate of Ksh. 184,130/- per month.
 - d. In the alternative and without prejudice to the foregoing, the Claimant be compensated by the Respondents for the unlawful termination set as out hereunder:
 - i. Twelve (12) month's salary being damages for unlawful termination in the sum of Ksh. 2,209,560.
 - ii. Unpaid salaries and allowances from May 2022 to November 2022 when the purported termination was effected, in the sum of Ksh. 1,288,910;
 - iii. Three month's salary in lieu of notice in the sum of Ksh. 552,390;
 - iv. Reimbursement of all payments made by and or recovered from the Claimant and or guarantors towards settling the Ukulima SACCO loan from May 2022 to date at the rate of Ksh. 42,045 per month;
 - v. Certificate of service;
 - vi. Be allowed to process her pension.
 - e. Interest on (c) and (d) at court rate.
 - f. The Respondents pay the Costs of this Claim together with interest at court rates from the date of filing until payment in full.
 - g. Any other relief that the Honourable court deems fit to grant.
5. The Respondents filed a joint Reply to the Statement of Claim in which they contend that the Claimant was dismissed after a lawful, efficient, expeditious and procedurally fair disciplinary process as provided by the law and the 1st Respondent's Human Resource Policies and Procedures Manual (HR Manual) as the Claimant intentionally failed to appear to defend herself on realising that she had no defence. Consequently, the Respondents have asked the Court to dismiss the claim with costs.
 6. The matter proceeded for hearing on diverse dates during which both sides called oral evidence.

Claimant's Case

7. The Claimant testified in support of her case and for starters, she sought to adopt her witness statement to constitute her evidence in chief. She further produced the documents filed on her behalf as exhibits before Court.
8. It was the Claimant's testimony that the 1st Respondent, vide an internal memo dated 14th April 2022, purported to summon her to show cause why disciplinary action should not be taken. According to the Claimant, the Notice to Show Cause was not delivered in compliance with the relevant legal requirements. She further disputed receiving the Notice to Show Cause, which she contends was not delivered through her registered mail address.
9. The Claimant further averred that the 1st Respondent's Chief Human Resource & Administration Officer communicated, via an internal memo dated 27th May 2022, the decision to unlawfully withhold



- and or stop her salary pending the hearing and determination of allegations that were levelled against her. In the Claimant's view, this was against the provisions of the Human Resource Management Policies and Procedures Manual, which provides for half pay during suspension and or interdiction. That during the intervening period leading up to and during the impugned disciplinary proceedings carried by the 1st Respondent, she was neither suspended or interdicted or placed on half pay.
10. According to the Claimant, she only became aware of her termination through a letter dated 21st November 2022.
 11. The Claimant further averred that prior to the termination and while fulfilling her duties, she experienced mistreatment and discrimination, including being transferred between departments on short notice and ultimately being placed in an office without a proper working space.
 12. It was the Claimant's evidence that on or around 17th February 2022, she submitted a request for 30 days' leave through a leave application form dated the same day. The request was duly approved by the 1st Respondent via a letter dated 15th March 2022.
 13. The Claimant added that the 1st Respondent backdated the leave to commence on 9th February 2022 and end on 22nd March 2022.
 14. The Claimant maintains that she returned to work upon the conclusion of her approved leave period. To this end, she was categorical that any assertion by the 1st Respondent that she was absent from duty without official leave from 23rd March 2022 to 14th April 2022 is both misleading and untrue.
 15. The Claimant further averred that upon returning from leave, she was frustrated due to the absence of a working space. This frustration significantly contributed to the worsening of her hypertension condition and consequently, she sought medical treatment and was placed under medication and continuous supervision by her doctor, a regimen that persists to date.
 16. The Claimant further stated that she has never received any communication regarding the existence of a disciplinary hearing against her through her registered address and has not received any invitation to attend such a hearing.
 17. That further, she was not given written reasons for the disciplinary action and therefore, the termination of her employment came as a shock and surprise.
 18. It was the Claimant's further contention that her fundamental and guaranteed right to defend herself and challenge any evidence presented against her was blatantly violated. That she was disciplined without being afforded the basic opportunity to present her side of the story or provide any rebuttal.
 19. That upon learning of the impugned termination of her employment, she challenged the decision and formally applied for a review of the same. That to date, the 2nd Respondent has failed to convene and consider her request for review.
 20. According to the Claimant, the 2nd Respondent has impeded the review process by postponing the hearings twice, thereby infringing upon her right to a fair hearing.
 21. She further averred that as a member of Ukulima SACCO, she had taken a loan secured by her payslip, with monthly deductions directly facilitated from her salary. That following the loss of her employment, she found herself in arrears totalling Kshs. 4,357,222.35. Consequently, she has defaulted on her loan obligations, resulting in the SACCO initiating alternative loan recovery measures against her and the guarantors.



22. The Claimant further averred that despite having faithfully performed her obligations as required, the 1st Respondent has failed and has refused to pay her dues plus the terminal benefits which she is rightfully entitled to.

Respondents' Case

23. The Respondents called oral evidence through Joseph Ojiambo Ouma who testified as RW1. He identified himself as the Manager, Human Resource & Administration of the 1st Respondent. Similarly, RW1 adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed on behalf of the Respondents as exhibits before Court.
24. It was RW1's testimony that the Claimant was terminated from service vide a letter dated 21st November, 2022 for active participation in elective politics in the 2022 General Elections without prior resignation from service as a public officer and failure to resume duty on 23rd March, 2022 upon lapse of her approved 30 days annual leave and subsequent absence from duty.
25. According to RW1, the Claimant's name was also published in the Independent Electoral and Boundary Commission (IEBC) Kenya Gazette Notice Vol. 129 dated 1st July, 2022, for the position of Women Representative for Bomet County as an independent Candidate.
26. RW1 averred that the Claimants' active participation in elective politics without prior resignation from Civil Service six (6) months before the date of the election was contrary to the provision of the Election Act, 2021, and the prevailing government circulars on election matters.
27. It was RW1's evidence that vide an internal memo dated 4th February, 2022, the 1st and 2nd Respondents conveyed to all staff the contents of the Circular dated 28th January, 2022 from the Head of Public Service which required public officers who intended to seek elective posts in the General Elections of 2022 to resign from office at least six (6) months before the date of the General Elections, which information was well within the Claimant's knowledge.
28. RW1 further averred that vide an internal memo dated 14th April 2022, the Respondents informed the Claimant of her noted active participation in politics and vying for an elective position in Bomet County in the 2022 General Elections and her absence from duty without official leave from 23rd March 2022.
29. The Claimant was further informed of the stoppage of her salary pending a determination by the Authority's Staff Advisory Committee on the disciplinary matter and was notified that a further notice inviting her to appear before the Committee was to be served on her at a later date. This was done vide a memo dated 27th May 2022, as the Claimant had failed to respond to the earlier memo dated 14th April 2022.
30. RW1 further averred that vide a memo dated 10th June, 2022, the Respondents served the Claimant with a notice requiring her to appear for hearing before the Authority's Staff Advisory Committee on 22nd June, 2022 at the Boardroom at 10.00 a.m. She was also informed to appear in the said hearing with a person of her own choice as a witness.
31. That vide a memo dated 22nd June, 2022, the Claimant was informed of the postponement of the hearing before the Respondents' Staff Advisory Committee on 22nd June 2022, to 18th July 2022, at the same venue at 2.00 p.m.
32. That on 2nd September, 2022, the Respondents sent to the Claimant a 3rd notification for hearing on 14th September 2022, following her non-appearance for the hearing that had been scheduled on 18th



July 2022 and was advised that disciplinary measures would be taken against her for failure to appear without further reference to her.

33. According to RW1, the Claimant failed to appear/attend the hearing of her disciplinary case on 14th September, 2022. The Respondents' Staff Advisory Committee deliberated on the Claimant's disciplinary case and recommended that her employment be terminated with effect from 1st May 2022.
34. RW1 further averred that the Claimant was also informed of her right of appeal within 21 days from the date of the termination letter being 21st November, 2022.
35. That during the 2nd Respondent's Full Board Meeting held on 21st and 22nd December, 2022, the Management presented a report by its Staff Advisory Committee. The Full Board was notified of the recommendations made by the Staff Advisory Committee.
36. The Claimant appealed against the decision for termination of her employment service on 28th August, 2023, way after the appeal window had lapsed on 14 December 2022 which was more than eight (8) months.
37. The Respondents reviewed the appeal brought before it and noted that the appeal was time-barred. It was recommended that due process had been followed and the termination had been done procedurally and that the Board could invite the Claimant for a briefing on the termination process, the grounds of termination and thereby bring the matter to closure.
38. The Respondents invited the Claimant for the hearing of her appeal vide a letter dated 5th December 2023 for appearance on 21st December 2023. She was also informed of her right to appear with a person of her choice as a witness.
39. Vide a letter dated 13th December 2023 and email dated 11th December 2023 to the Claimant, the hearing date of her appeal was moved from 21st December 2023 to 20th December 2023.
40. The Claimant vide a handwritten letter dated 13th December 2023, acknowledged receipt of the Respondents' letter and confirmed her availability to attend the scheduled hearing on her appeal.
41. RW1 further averred that the 1st and 2nd Respondents' Committee on Human Resource, Administration & Governance thereafter submitted the report of their decision to the 2nd Respondent's Full Board Meeting held on 19th and 20th December 2023. The Full Board deliberated on the report and observed that the matter had been discussed and concluded during the Full Board meeting held on 20th and 21st December 2022.
42. The Claimant was verbally informed by the 1st Respondent in an in-person meeting at the Respondents' Offices of the decision of 19th and 20th December 2023.
43. It was RW1's further testimony, the Claimant had an opportunity to appeal against the decision of the 2nd Respondent to the Public Service Commission, which opportunity she did not explore.
44. RW1 was categorical that the Claimant's employment was terminated lawfully as a consequence of her acts of commission and omission and is not entitled to any prayers sought in her Statement of Claim as she had been paid all her salaries and allowances up to the effective date of her termination of employment, save for her pension benefits and issuance of Certificate of Service.

Submissions

45. On the Claimant's part, it was submitted that the Respondents' actions were procedurally and substantively flawed, thereby offending the principles of fair labour practices, due process, and the



right to fair administrative action as enshrined in the law. In support of the Claimant's position, the court was invited to consider a number of authorities being *Kenya Ports Authority v Munyao & 4 others (Petition E008 of 2023)* [2023] KESC 112 (KLR) (Civ) (28 December 2023), *Pamela Nelima Lutta v Mumias Sugar Company Limited* [2017] eKLR, and *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR.

46. It was further submitted that the Respondents had no valid, fair and legal reason to justify the abrupt and unexpected termination of employment of the Claimant. According to the Claimant, her termination from employment was premised on unsubstantiated allegations.
47. That further, the Claimant was not accorded any disciplinary hearing prior to her dismissal. In this regard, it was argued that the Respondents failed to comply with the mandatory procedural safeguards outlined under the *Constitution*, the *Employment Act*, and the Respondent's HR Management Policies and Procedures Manual (2016), thereby rendering the termination procedurally and substantively flawed.
48. In the Claimant's view, the Respondents failed to present any cogent or credible evidence to prove that she committed the acts alleged. In the same vein, it was contended that no independent investigations were conducted by the Respondents to verify the allegations that the Claimant contested in the 2022 General Elections for the position of Bomet County Woman Representative without resignation and also absented herself from duty without official leave from 23rd March 2022 to 14th April 2022.
49. With respect to procedure, it was submitted that the Claimant was not subjected to any disciplinary hearing whatsoever, nor was she afforded a fair and reasonable opportunity to respond to or defend herself against the allegations levelled against her. To augment the Claimant's submission, reliance was placed on the cases of *Zablon Bisonga Mose v Real Careers Limited* [2018] eKLR and *Donald Odeke v Fidelity Security Limited* [2012] eKLR.
50. On the other hand, the Respondents submitted that the Claimant's failure to attend the hearing before the Staff Advisory Committee cannot be attributed to them, as it constitutes a waiver of her right to make representations.
51. Referencing the cases of *Engoke v Maridadi Flowers Limited* [2024] KEELRC 13603 and *Omondi v Attorney General & 2 Others* [2021] KECA 1086, it was the Respondents' argument that the Claimant was afforded analogous procedural protections, including a clear explanation of the charges, an opportunity to defend herself, which she declined and a right to appeal, rendering her claim of procedural unfairness baseless.
52. The Respondents further submitted that their belief in the Claimant's misconduct was grounded in her verifiable candidacy for Bomet County Women Representative, a public act that breached her obligations as a public officer. In support of this position, the Respondents cited the case of *Walter Ogal Anuro v Teachers Service Commission* (*supra*).
53. Still on reasons for termination, the Respondents argued that the Claimant's deliberate violation of public service regulations constitutes a substantive ground for termination, as it undermined the impartiality and integrity required of her role.
54. It was further submitted that the Claimant's failure to appeal within the stipulated 21-day period, as communicated in the termination letter, bars her from now challenging the process.



Analysis and Determination

55. Flowing from the pleadings by both parties, the evidentiary material on record, together with the rival submissions, the Court has isolated the following issues for determination: -
- i. Whether the Respondents have proved that there was a fair and valid reason to terminate the employment of the Claimant;
 - ii. Was the Claimant accorded procedural fairness prior to being terminated from employment?
 - iii. Is the Claimant entitled to the reliefs sought?

Fair and valid reason?

56. As can be discerned from the letter of termination dated 21st November 2022, the Claimant was dismissed from employment on the following grounds;
- i. that she actively participated in elective politics as a candidate for the Bomet County Women Representative seat on an independent ticket during the 9th August 2022 elections without prior resignation from service contrary to the circular from the Head of Public Service dated 28th January 2022; and
 - ii. that she failed to resume duty on 23rd March 2022 upon the lapse of her approved 30 days' annual leave and subsequent absence as at 14th April 2022.
57. Disputing the allegation that she failed to resume duty upon lapse of her approved leave, the Claimant has contended that the 1st Respondent backdated her leave to commence on 9th February 2022 and end on 22nd March 2022.
58. From the record, the Claimant applied for her annual leave on 17th February 2022, in which she indicated the start date as being 9th February 2022 and the end date as being 22nd March 2022. The leave application was approved on 17th February 2022 by three officers of the 1st Respondent (Isaiah Induswe, Mary Mwangi and Joseph Ouma).
59. Through a letter dated 15th March 2022, the Claimant was notified that her leave had been approved for 30 days commencing on 9th February 2022 and ending on 22nd March 2022. In this regard, she was advised that she was to resume duty on 23rd March 2022. Notably, the dates communicated by the 1st Respondent in the letter dated 15th March 2022 align with the Claimant's leave application dated 17th February 2022.
60. It is also notable that despite the Claimant's assertions that the Respondents backdated her leave to commence on 9th February 2022, there is no evidence that she challenged the leave approval dated 15th March 2022, indicating the start and end dates of her leave.
61. According to the Claimant, she resumed work on 15th April 2022 upon completion of her approved leave and upon returning, she experienced frustrations due to the absence of a working space. That this contributed to her hypertensive condition and she sought medical treatment. During re-examination, the Claimant testified that she was very sick and was admitted in the hospital. However, she could not remember the duration of her admission.
62. Notably, aside from pleading that she was unwell and had to seek medical treatment, the Claimant did not indicate the period she was absent from work on account of ill health. I say so bearing in mind that the medical records exhibited by the Claimant relate to 2018 to 2020, before the facts leading to this



- dispute arose. In addition, the medical report from Aga Khan University Hospital, signed by Sayed K. Ali MD bears a stamp of 18th January 2024. Evidently, this falls outside the period in question.
63. Further to the foregoing, the Claimant has not indicated or suggested that she applied for sick leave in line with the 1st Respondent's HR Manual, for authorization to be away on account of illness.
 64. The Claimant also testified that the Respondents stopped her salary vide an internal memo dated 27th May 2022. This being the case, the lingering question is why the Claimant did not challenge the stoppage of her salary if her version that she was on duty is to be believed.
 65. It is rather odd and implausible that the Claimant would continue working despite not being on the payroll from May to November 2022 when she was terminated from employment. I say so, noting that there is no evidence on record that in the intervening period, the Claimant challenged her removal from the payroll.
 66. Notwithstanding the gaps in the Claimant's case, the court notes that the Respondents failed to exhibit the attendance register or such other document confirming that indeed, the Claimant was absent from duty as alleged. This was a fundamental omission on the part of the Respondents. In terms of Section 43 (1) of the *Employment Act*, the evidential burden was on the Respondents to prove the reasons for the termination of the Claimant's employment.
 67. Therefore, on this issue, I am led to conclude that the Respondents have not proved to the requisite standard that the Claimant failed to resume duty upon lapse of her 30 days' leave hence was absent from duty without official leave.
 68. The Claimant was further accused of actively participating in elective politics as a candidate for the Bomet County Women Representative seat on an independent ticket during the 9th August 2022 elections without prior resignation from service.
 69. In support of their case, the Respondents exhibited a copy of a Gazette Notice No. 7995 dated 1st July 2022 bearing the name "Florence Cheron Birir" as being one of the contestants who had vied for the post of Women Representative seat for Bomet County.
 70. Further exhibited was a copy of a letter dated 28th May 2022 from the Ethics and Anti-Corruption Commission (EACC) addressed to the 1st Respondent's Managing Director in which the EACC was seeking information with respect to an employee by the name "Birir Florence Cheron, ID no. 8548*" on the basis that she was an aspirant for an elective position.
 71. The Gazette Notice No. 7995 dated 1st July 2022, considered alongside the letter dated 28th May 2022 from the EACC, leads me to conclude that the person identified as "Birir Florence Cheron" in the Gazette Notice as being the contestant for the position of Women Representative for Bomet County, refers to the Claimant.
 72. Indeed, chances are odd that the letter from the EACC would be referring to a different officer by the name "Birir Florence Cheron" who was at the material time in the employment of the 1st Respondent.
 73. To require the Respondents to prove without doubt that the Claimant participated in the August 2022 General Elections would be raising the standard of proof beyond that established under Section 43(2) of the *Employment Act*.



74. Addressing the question of standard of proof in employment matters, the Court of Appeal had this to say in the case of *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR:
- “The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing it to terminate the employee’s services.”
75. Applying the standard of proof in this case, the Court finds that the Respondents did not have to prove beyond reasonable doubt that the Claimant contested in the 2022 General Elections. From the material on record, the Court is satisfied that on a balance of probabilities, the Respondents have proved that the Claimant contested for the position of Women Representative for Bomet County, during the 2022 General Elections.
76. Pursuant to Gazette Notice No.433 of 2022, a public officer intending to contest in the general elections was required to resign within six (6) months before the date of the General Elections being 9th February 2022. This position was reiterated by the then Head of Public Service in a Circular dated 28th January 2022.
77. In the present case, there is no evidence on record that the Claimant tendered her resignation as required by the Gazette Notice No. 433 of 2022 prior to contesting in the 2022 General Elections.
78. For the foregoing reason, the Court is persuaded that the Respondents have proved on a balance of probabilities that there was a fair and valid reason to terminate the Claimant’s employment on account of her participation in the 2022 General Elections.

Procedural fairness?

79. Under Section 45 (2) (c) of the *Employment Act*, an employer bears the burden of proving that the employment was terminated in accordance with fair procedure. The specific requirements encompassing a fair procedure are provided for under Section 41(1) of the *Employment Act*. In this case, an employer is required to notify an employee of the intended termination in a language he or she understands. The employee should also be given an opportunity to present his or her defence in response to the allegations levelled against him or her in the presence of a fellow employee of her own choice or a union representative, as the case may be.
80. It is the Claimant’s case that she did not receive any communication as to the existence of a disciplinary hearing. Fundamentally, the Claimant contends that she was not afforded an opportunity to be heard prior to her termination from employment.
81. From the record, the disciplinary process against the Claimant was initiated by way of an internal memo dated 14th April 2022, in which she was required to explain her absence from duty without official leave and participation in active politics. Through the internal memo, the Claimant was invited to show cause why disciplinary action should not be taken against her.
82. This was followed by invitations to disciplinary hearings, which were similarly dispatched to the Claimant through internal memoranda dated 10th June 2022 and 22nd June 2022. This was rather odd, seeing that the gist of the Respondents’ case is that the Claimant was absent from work with effect from 23rd March 2022. It is therefore not clear how the Respondents expected the Claimant to receive the internal memoranda while out of the office and respond to the same. Further to this, there is no evidence that the Claimant received the internal memoranda.



83. It is also worth noting that Clause 26.14(ii) of the Respondent's HR Manual provides expressly that a "show cause letter" to an employee who is absent from duty without leave is to be addressed through the employee's last known address. Therefore, it is apparent that the manner in which the 1st Respondent invited the Claimant to show cause was not in tandem with its own Policy requirements.
84. Cross-examined on this issue, RW1 testified that the internal memoranda were forwarded to the Claimant through email. Be that as it may, no email was exhibited before Court to prove this assertion.
85. Indeed, I cannot help but question why the Respondents would elect to dispatch the Notice to Show Cause and notification for disciplinary hearings to the Claimant through internal memoranda, yet she had provided a registered postal address. This is bearing in mind that the letter of termination was dispatched through the Claimant's registered postal address. Why was this not the case for the Notice to Show Cause and invitations to the disciplinary hearings?
86. What can be deduced from the foregoing is that there is no evidence on record confirming that the Claimant was afforded an opportunity to be heard prior to being terminated from employment. This confirms the Claimant's assertions that she was not allowed to give her side of the story prior to being terminated from employment.
87. Against this backdrop, the Court finds that the Respondents failed to comply with the requirements of procedural fairness as envisaged under Section 41 of the *Employment Act*, in effecting the Claimant's termination from employment. In the end, the Claimant was not subjected to a process that was fair and just.

Reliefs?

88. The Claimant has prayed for an order of reinstatement and payment of back salaries from May 2022 to date. This relief is declined for the reason that the Court has found that the Respondent has proved to the requisite standard that there was a valid and fair reason to cause termination of the Claimant's employment on the basis of her participation in the 2022 General Elections.
89. It is worth pointing out that under Section 49(4) of the *Employment Act*, the Court in assessing the nature of appropriate relief to award an employee who was unfairly dismissed, is mandated to consider among other factors, the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination.
90. Considering the circumstances of this case, it follows that an award of reinstatement is untenable.
91. As the Court has found that the termination of the Claimant's employment, although for a fair and valid reason, was not in line with the requirements of a fair hearing, the Court will award her one (1) months' salary in lieu of notice and compensatory damages equivalent to three (3) months of her last salary.
92. The Respondents have further confirmed that the Claimant is yet to access her pension benefits. Consequently, the 1st Respondent shall facilitate the processing of the Claimant's pension benefits.
93. The Claimant is also entitled to a Certificate of Service as the employment relationship is not in dispute.
94. The claim for unpaid salaries and allowances is declined. Equally, the claim for reimbursement of payments made and recovered from the Claimant towards settling her loan is disallowed.



Orders

95. The total sum of my consideration is that Judgment is entered in favour of the Claimant against the Respondents in the following manner:
- a. A declaration that the termination of the Claimant's employment was procedurally unfair.
 - b. The Claimant is awarded one (1) month's salary in lieu of notice being the sum of Kshs 184,130/=.
 - c. The Claimant is awarded compensatory damages in the sum of Kshs 552,390.00 which sum is equivalent to three (3) months of her gross salary.
 - d. The total award is Kshs 736,520.00.
 - e. Interest shall apply on the amount in (d) at court rates from the date of Judgment until payment in full.
 - f. The Claimant shall be allowed and facilitated to access her pension benefits.
 - g. The Claimant shall also have the costs of the suit.
 - h. The Claimant shall be issued with a Certificate of service within 30 days from the date of Judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Kiprono for the Claimant

Mr. Mbui instructed by Ms. Aluoch for the Respondents

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

