



**Ooko v Quest Holdings Limited & another (Cause 321 of 2019)
[2024] KEELRC 85 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 85 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 321 OF 2019
J RIKA, J
JANUARY 31, 2024**

BETWEEN

TOBIAS OOKO CLAIMANT

AND

QUEST HOLDINGS LIMITED 1ST RESPONDENT

ERIC OLUOCH 2ND RESPONDENT

JUDGMENT

Pleadings

1. The Claimant filed his Statement of Claim on 17th May 2019.
2. He states that he was employed by the 1st Respondent as Internal Audit and Compliance Manager, on 1st April 2016.
3. The 2nd Respondent is described as the Group Chief Executive Officer of the 1st Respondent and the appointing authority.
4. The 2nd Respondent purported to terminate the Claimant's contract on 18th April 2019. The Claimant avers that termination was without notice; he was not heard; and was not given valid reason to justify termination. He was denied the opportunity to appeal.
5. The 1st Respondent has a disciplinary policy which provides for fair hearing, preceded by 24-hour notice. It provides for written and final warnings. The Respondents ignored the policy and the [Employment Act](#).
6. The Claimant avers that he was a victim of a witch-hunt by the 2nd Respondent, after he raised a red flag, with regard to PAYE tax. This tax was deducted from staff salaries, but not remitted to the KRA. The Claimant was victimised also, for raising a red flag against the former Group CEO, for taking a



loan from Discount Capital Limited which is his own financial services company, without the approval of the Board of Directors.

7. The Claimant prays for: -
 - a. Declaration that termination was unfair, unlawful, unreasonable and contravened principles of natural justice, the employment contract and policy.
 - b. Damages for wrongful and unlawful termination.
 - c. 12 months' salary in compensation for unfair and unlawful termination, based on a monthly gross salary of Kshs. 180,000 at Kshs. 2,160,000.
 - d. Salary for 18 days worked in April 2019.
 - e. 1-month salary in *lieu of* notice.
 - f. 6 days of annual leave at Kshs. 24,000.
 - g. Severance pay for 2 years and 8 months at Kshs. 166,000.
 - h. Loss of earnings for 29 years the Claimant expected to have served the 1st Respondent, taking into account any promotions and salary increments.
 - i. Compensation for violation of the Claimant's rights, reputational damage, loss of career, and golden opportunities.
 - j. Costs.
 - k. Interest.
 - l. Certificate of Service to issue.
8. The Respondents filed their Statement of Response dated 7th October 2020. It is admitted that the Claimant was an Employee of the 1st Respondent, and that the 2nd Respondent was the 1st Respondent's CEO. The Claimant's contract was terminated for valid reasons. Termination followed the 1st Respondent's disciplinary policy, the employment contract and the [Employment Act](#).
9. The concern on unremitted PAYE tax, was not raised by the Claimant; it was raised through a tax audit carried out by PKF for the 1st Respondent. The Board of Directors was aware of the Discount Capital Limited facility.
10. A meeting was held between the Claimant and the 2nd Respondent. The Claimant's performance was discussed. He was given the opportunity to state his position. He chose to remain silent. He was advised of his right to appeal termination decision, in the letter of termination, and the letter responding to his demand letter dated 23rd April 2019.
11. Termination was as a result of poor performance. He performed contrary to the 1st Respondent's standard operating manual for the internal audit and compliance department. He failed to conduct and hand in audit reports for the 1st Respondent's finance and business development functions. He handed in audit reports without comments from management as required. He failed to disclose that the Finance Manager, Lorna Mora Mareri, was his relative, contrary to the 1st Respondent's conflict of interest policy.



12. He was offered terminal benefits through a cheque dated 30th April 2019. Terminal benefits included notice, leave days, and salary for days worked. A certificate of service was prepared and is ready for collection. Severance pay is not merited as the Claimant did not leave employment on redundancy
13. The Claim is brought maliciously. The Respondents pray the Court to dismiss the Claim with costs.
14. The Claimant filed a Reply to the Statement of Response, dated 17th September 2021. He denies that his performance was poor. He reiterates that the 2nd Respondent victimized him for raising red flags. He prepared internal audit work plan for the year 2018. He shared it with the 2nd Respondent for approval. The 2nd Respondent declined to approve, disabling the Claimant in preparation of audit report. Allegation of poor performance is without foundation. The 2nd Respondent frustrated the Claimant in discharge of his role. He requested for the chance to appeal through his Lawyers. This request was denied. If it was true that his performance was poor, he was not placed on Performance Improvement Plan [PIP], in accordance with existing performance management policy.

Hearing.

15. The Claimant gave evidence on 22nd November 2022, 22nd February 2023, and 23rd July 2023 when he rested his case. The Respondents gave evidence through the 2nd Respondent, CEO Eric Ochieng' Oluoch, on 25th July 2023, closing the hearing.

Claimant's evidence.

16. The Claimant adopted in his evidence-in-chief, his 2 witness statements on record. He exhibited documents contained in an original and supplementary bundle [exhibits 1-10 and 11-37 respectively].
17. He emphasized that he was not subjected to disciplinary hearing. He was not placed on PIP. There were no specific charges. The letter of termination did not state the reasons.
18. He prepared audit plans at the beginning of each year. He would share with the CEO for approval. In 2016 he shared with then CEO, Jared Aimba. Aimba approved and the Claimant prepared the relevant audit report. He shared the work plan with the 2nd Respondent for the 2nd half, year 2017. There was no approval. This was repeated for the year 2018. The Claimant did not therefore prepare audit reports for the period. He carried audit and prepared reports previously, based on approved work plans.
19. Cross-examined, the Claimant told the Court that he sued the 2nd Respondent because as the CEO, he is automatically a Director. The Claimant was aware that the 2nd Respondent was part of the executive staff. The 2nd Respondent wrote e-mail to the Claimant dated 23rd January 2019, complaining that he had not received the audit report. The Claimant responded, forwarding the audit report. Another e-mail from the 2nd Respondent dated 31st January 2019, states that there were discussions, between the Claimant and the 2nd Respondent, concerning his duties. It was alleged that the Claimant only shared the audit report for 2018. It was alleged that only one meeting was held, against a schedule of several meetings. Failure was said to have been occasioned by the Claimant's failure to complete his audit reports. It was alleged that the Claimant persistently reported to work late. He was alleged to have failed to notify his managers when running late. The Claimant did not reply to this e-mail in writing.
20. The Claimant told the Court further, under cross-examination, that he was diligent. There were no complaints against his performance. He did not have written responses to the e-mails from the CEO concerning his performance. The 2nd Respondent wrote an email dated 27th February 2019. The Claimant replied, saying he was preparing the Human Resource audit. The report was not ready.



21. Working hours started at 8.30 a.m., ending at 5.30 p.m. The Claimant wrote requesting to start at 7.30 p.m. and end at 4.30 p.m. It was not formally approved. An e-mail dated 31st January 2019, indicates that the Claimant reported to work at 10.30 a.m. It was variously indicated that he reported at 10.58 a.m., 10.11 a.m., and 12.03 p.m., etc. These were mere allegations. The Claimant conceded that he did not address the issue of late reporting in his witness statements.
22. The Claimant conceded that he was advised on his right of appeal, through the letter of termination. He appealed through his Lawyers.
23. An Employee was liable to be dismissed for persistent absence. Improper performance of duty, would result in dismissal. The Claimant raised a red flag on PAYE tax, in 2017. He did not know if external auditor raised the same query.
24. Moraa was a sister-in-law to the Claimant. She was already in employment, at the time the Claimant joined. The Claimant disclosed this to the CEO through a one-on-one discussion. Policy required declaration of conflict of interest, by filing a form. The Claimant filed the form, but stated nothing about Moraa.
25. The Claimant conceded that the loan taken by the former CEO from Discount Capital Limited, was approved. He told the Court that he could have been referring to a different loan. The Claimant pleads for damages separately. He was not notified by the Respondents that his terminal benefits had been computed, and certificate of service prepared. He was made aware through the Statement of Response filed in Court, but could not pick his cheque, because the matter was already in Court.
26. Redirected, the Claimant told the Court that he did not respond to some of the e-mails from the CEO, because the response had already been discussed at length, between him and the CEO. He submitted audit work plans, which the CEO did not approve, resulting in inability to prepare audit reports. The Claimant was not warned about late reporting. He appealed termination through his Lawyers. The Respondents wrote back, saying that the Lawyers had no locus in administrative matters.

Respondent's evidence.

27. CEO Oluoch, relied on his witness statement and documents filed by the Respondents, exhibit 1-20.
28. The Claimant was performing poorly. The last audit report he supplied to the CEO was in 2017. He started coming late to work, around 2017-2018. The CEO discussed the issue with the Claimant. He did not mend. The Claimant was only prompt, during the executive committee meetings. There was a biometric register in place. The Respondents had to take action against the Claimant.
29. He was related to the Finance Manager, Moraa. He did not disclose this conflict of interest. He signed the conflict of interest disclosure form, without disclosing.
30. He did not make any attempt to collect his certificate of service and terminal dues.
31. Cross-examined, the CEO admitted that the Respondents did not issue a letter to show cause to the Claimant. There was no invitation to a disciplinary hearing. No charges relating to performance or lateness were communicated. Reference was made in the letter of termination, to past discussions. The 1st Respondent has a disciplinary procedure. It was not followed.
32. The procedure provided for appeal. Appeal is made in writing. The Claimant appealed through his Lawyers. The grounds of appeal were set out. Policy did not expressly bar the involvement of Lawyers.



33. Late reporting attracted first, second and third warnings, before dismissal, under the disciplinary procedure. Oluoch did not have written warnings issued to the Claimant.
34. The appraisal form exhibited by the Respondents on the Claimant's performance, did not have signatures. The Claimant did not sign. Oluoch did not sign. Policy provided for PIP. The Claimant was not subjected to PIP. Oluoch told the Court that he did not exhibit a biometric report, capturing the Claimant's late reporting.
35. There were statutory and internal audits. The first was annual, the second quarterly. The internal auditor prepared the audit plan, upon consultation with the various departments. The CEO is supposed to approve the plan, opening the door for audit. Aimba was the CEO before Oluoch. He approved the Claimant's work plan for the 2nd half of 2016. Oluoch did not recall if the Respondents exhibited any document, showing approval of the work plan submitted by the Claimant, subsequently.
36. The Claimant was offered the certificate of service and terminal benefits. Oluoch did not remember if this was after the Claimant filed his Claim. The Claimant was paid his pension.
37. Redirected, Oluoch emphasized that the Claimant failed in his internal audit role. The Claimant was advised that appeal should be lodged in person. He did not rebut the e-mails on late reporting. Approval of work plan would not be granted, if previous audit report had not been generated. Termination letter referred to past discussions. The Claimant was aware about the offer of certificate of service and terminal benefits.

Submissions.

38. The Claimant submits that he was denied a hearing contrary to Section 41 of the *Employment Act*. The CEO confirmed in his evidence that there was no letter to show cause, and no hearing. The Respondent did not comply with its own disciplinary procedure and the *Employment Act*. The Claimant relies on decisions of the E&LC in *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014] eKLR and *Pamela Nelima Lutta v Mumias Sugar Company Limited* [2017] eKLR, in underscoring the primacy of procedural justice. He submits that his appeal should not have been disregarded on account of being presented by his Lawyers, citing the case of *Dennis Nyagaka Ratemo v Kenya Film Corporation & Another* [2014] eKLR, where the Court proposed that Lawyers ought to be engaged in disciplinary processes.
39. The Claimant submits that valid reason was not shown, to justify termination, in accordance with Section 43 of the *Employment Act*. The letter of termination, dated 18th April 2019, did not state any reason to justify termination decision. The Respondents did not show that the Claimant performed poorly, in accordance with the standards prescribed in *Peter Kamau Mwaura & Another v National Bank of Kenya* [2020] eKLR. The Claimant was never put on PIP in accordance with the 1st Respondent's policy. No warnings issued. There was no biometric record produced, showing that the Claimant reported late, and no warnings issued for late reporting. The Claimant submits that he has established his Claim, and prays the Court to allow the Claim.
40. The Respondents submit that the 2nd Respondent was an Employee of the 1st Respondent, and is mis-joined as a Co-Respondent. He cannot bear employment liability. The Respondents cite decision of the Court in *Akinyi & 4 Others v Kenya Medical Research Institute [KEMRI] & Another* [Petition E001 of 2023][2023] KELRC 2060 [KLR].
41. Citing *Kenya Revenue Authority v Renwel Waitbaka Gitabi & 2 Others* [2019] eKLR, the Respondents submit that the Claimant was dismissed on valid ground, and that substantive



justification, does not require the Employer to undertake a forensic enquiry, and seek proof beyond reasonable doubt.

42. The Claimant held discussions concerning his performance with the CEO on 29th January 2019; there were e-mails exchanged between the Claimant and the CEO raising concerns about his performance; scheduled monthly meetings had aborted on account of the Claimant's failure to generate audit reports; and the Claimant persistently reported to work late. These defaults were discussed with the CEO, as shown in the exchange of e-mails on record.
43. The Respondents submit that not every departure from an agreed procedure, constitutes unfair dismissal. The Employer is entitled to dismiss the Employee, if the procedural steps not taken, would have been futile, and not affected the decision to dismiss. This submission is anchored on the English decision in the House of Lords, *Palkey v A.E. Dayton Services Limited* [1988]AC 344. Dismissal without following any procedure has been upheld in UK Employment Appeals Tribunal in *Linda Gallacher v Abello Scotrail Limited* 4102245/2017. The Tribunal held that procedural requirements are not necessary, where trust and confidence has broken down; it is open for the Court to conclude in certain circumstances, that dismissal without following agreed procedure, is within the band of reasonable responses; and adherence to procedure may only worsen the relationship between the Parties, in certain instances. Nothing would have changed the decision to dismiss the Claimant, if prescribed termination procedure was followed.
44. Damages are not awardable as a matter of right. Section 49 of the *Employment Act* intends that an aggrieved Employee is compensated. It is not intended to punish an Employer. The Respondents rely on the Court of Appeal decisions in *USIU v Eric Rading Outa*, [2016] eKLR and *Kenya Broadcasting Corporation v Geoffrey Wakio* [2019] eKLR. in making this submission. The Respondents submit, citing various decisions from Superior Courts that, if the Court is persuaded that the Claimant was unfairly dismissed, compensation equivalent of 2-5 months' gross salary would suffice.
45. Lastly, it is submitted for the Respondents that they have already offered the Claimant terminal benefits including notice pay, days worked, and outstanding leave days. The Respondents issued a cheque for Kshs. 263,283, which the Claimant has refused to collect. He was offered certificate of service. He did not leave on redundancy. There is no reason for the Court to order the Respondents to pay terminal benefits which have been on offer to the Claimant.
46. The issues as identified by the Parties are whether the Claimant's contract was terminated in accordance with fair procedure; whether it was founded on fair and valid reasons; and whether his prayers are merited.

The Court Finds: -

Uncontested facts.

47. It is agreed that the Claimant was employed by the 1st Respondent, as Internal Audit and Compliance Manager, on 1st April 2016. It is agreed that the 2nd Respondent terminated the Claimant's contract on 18th April 2019.
48. The 2nd Respondent did not give reasons in the letter of termination, beyond citing clause 11 of the Claimant's contract of employment, which states that the contract may be terminated by either Party through a written notice of 1 month, or payment of 1-month salary in *lieu of* such notice. The clause states further that, the Claimants contract could be terminated upon notice, after the Claimant is taken through the 1st Respondent's documented disciplinary process.



49. He was entitled to a monthly gross salary of Kshs. 180,000.
50. Duplicated prayers. The Court has noted at the outset, that some of the prayers pleaded by the Claimant are duplicated. Others have no support in fact and law.
51. Prayer [b] seeks damages for wrongful and unlawful termination. Prayer [c] seeks damages for unfair and unlawful termination, equivalent of 12 months' gross salary. Prayer [h] seeks lost earnings over an anticipated period of 29 years. Prayer [f] seeks another award of compensation, for violation of the Claimant's rights, reputational damage and loss of career and golden opportunities.
52. There was only one termination of employment, whose remedies as contemplated under Section 49 of the *Employment Act*, and Section 12 of the *Employment and Labour Relations Court Act*, include compensatory damages, reinstatement or re-engagement.
53. There is no justification in the replete prayers for compensation, over the same single act of termination. The Court shall therefore consolidate these replete prayers, in issue being whether the Claimant merits compensation for unfair and unlawful termination.
54. The prayer for severance pay has no legal or factual foundation. It was never pleaded, or anywhere in the evidence of the Claimant, that he left employment on redundancy, so as to be entitled to severance, pleaded at Kshs. 166,000. This prayer is declined.
55. The Claimant was offered salary for the days worked in April 2019, notice pay equivalent of 1-month salary, and 6 pending annual leave days. He was offered a cheque for the sum of Kshs. 263,283. There was no reason for the Claimant to seek through the Court, benefits which the 1st Respondent has placed at the Claimant's feet. His certificate of service was prepared, and he was notified it was ready for collection, at least through the Pleadings filed by the Respondents. He is at liberty to collect what was offered by the 1st Respondent, without the intervention of the Court.
56. Although the Respondents did not challenge the inclusion of the 2nd Respondent in their Pleadings, they submit that the 2nd Respondent is improperly joined to the proceedings. The Court would agree with this submission. The 2nd Respondent was the CEO of the 1st Respondent. He, like the Claimant was an Employee, not an Employer. He did not have a contract with the Claimant. Although section 2 of the *Employment Act* on definition of an Employer, is broad enough to include CEOs, Managers, Agents, Foremen and Factors of such persons, the broad application can be considered only when there is doubt, on who the primary Employer is. The broad definition was intended to ensure that Employees are not hampered in identifying their Employers, in seeking remedies for employment wrongs, taking into account that the actual Employer is frequently concealed in layers of business and legal formations. It was not intended to give Employees a free licence, to join CEOs, Managers and every other Supervisor, in claims for unfair termination, where the primary Employer, is clearly identifiable. There was never controversy, that the Claimant executed a contract of employment with the 1st Respondent. He describes the 1st Respondent as a limited liability company. Details of the company are known to the Claimant. The 1st Respondent has not disputed that it employed the Claimant. He did not establish the necessity for joinder of the CEO. The CEO cannot, in the presence of the 1st Respondent, be called upon to shoulder employment liability, for any violations of the contract of employment, concluded between the Claimant and the 1st Respondent. The 2nd Respondent's value in the proceedings was as a witness. He gave evidence for the 2nd Respondent, but cannot assume employment liability, for his Employer. The Court is fortified in this conclusion by the decision cited by the Respondents in their submissions, *Akinyi & 4 Others v Kenya Medical Research*



Institute [KEMRI] & another [citation above]. The Claim against the 2nd Respondent is rejected with no order on the costs.

57. The issues in dispute therefore, are as stated at paragraph 46 of this Judgment, and the prayers due for consideration are: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Compensation for unfair and unlawful termination.
 - c. Costs and interest.
58. Procedural fairness. The Court would like to deal with this issue first, before going into validity of reasons, in justification of termination.
59. In his evidence, the CEO told the Court that: -Termination letter is dated 18th April 2019.I did not issue Notice to Show Cause.I did not invite him for disciplinary hearing.The company [1st Respondent] has a disciplinary procedure.It was not followed.The policy does not expressly bar Advocates.The procedure provides for verbal warning, second written warning, and final written warning on late reporting for duty.I did not issue written warning or final warning.
60. These concessions by the CEO clearly place the procedure adopted by the 1st Respondent, in terminating the Claimant's contract, in conflict with the minimum statutory standards of fairness, prescribed by the law, under Sections 41 and 45 of the *Employment Act*.
61. The procedure adopted by the 1st Respondent was similarly in conflict with the 1st Respondent's own disciplinary procedure.
62. Confronted with these concessions, the Respondents made a highly unpersuasive submission, relying on a decision of the UK Employment Appeals Tribunal in *Linda Gallacher v Abello Scotrail Limited* [citation above].
63. This decision is a throwback to the legal era preceding the *Employment Act* 2007, when termination was at the will of an Employer, for good cause, bad cause or no cause.
64. The UK Employment Appeals Tribunal does not administer the *Employment Act* 2007. Its decisions are not judicial authorities, on Kenyan employment law. Such decisions may be cited to amplify or supplement decisions made by our employment jurisdiction, by way of comparative jurisprudence, but cannot stand alone as reliable legal authorities on Kenyan employment law. The 1st Respondent has not submitted a decision from any Court in Kenya, which espouses the principles of procedural avoidance, invoked by the 1st Respondent.
65. Our *Employment Act* 2007, as upheld in a catena of decisions of our esteemed Superior Courts of record, demands procedural justice in termination of employment. The provisions of Sections 41 and 45 of the *Act* are mandatory.
66. The Court does not agree that prescribed procedure, statutory and internal, can be disregarded where trust and confidence has broken down; and where adherence to prescribed procedure would not change the decision of the Employer. Such an interpretation of the law would throw procedural fairness out of the window, and encourage Employers to make decisions to terminate Employees contract at the drop of a hat, without due process, throwing back employment relationships to the dark ages preceding the redeeming *Employment Act*, 2007.
67. Unless the Employee has unequivocally, expressly, admitted charges levelled against him by his Employer, the Court cannot think of a situation where prescribed procedure can be sidestepped. Even



with such admission, the basic requirements of fair procedure and rules of natural justice would require that the Employer communicates the allegations against the Employee, enabling the Employee to admit to the charges, thereby obviating the need for a hearing contemplated by Section 41 and 45 of the *Employment Act*.

68. The 1st Respondent did not as much as issue the Claimant with a letter, detailing the allegations against the Claimant, and the submissions made by the Respondents based on the UK Employment Appeals Tribunal, have no resonance.
69. There was no good reason why the 1st Respondent declined to consider the Claimant's appeal. There was an appeal submitted in writing by the Claimant through his Lawyers. The Court does not think that the appeal was rendered inadmissible, only on account of being prepared by the Claimant's Lawyers. The 1st Respondent ought to have received the appeal and considered it, in accordance with the disciplinary procedure. There was no bar to the appeal being submitted through the Claimant's Lawyers. The procedure only required an appeal to be submitted in writing, which requirement was met, through the written appeal submitted through the Claimant's Lawyers. Failure to consider, determine and communicate the outcome of the appeal to the Claimant, was against the disciplinary procedure.
70. Termination was unfair, on account of procedure.
71. Reason[s]. As observed at the outset, the letter of termination did not give detailed reasons, justifying termination.
72. The 1st Respondent merely invoked clause 11 of the contract, which allowed Parties to terminate the contract on notice of 1 month or payment of 1-month salary in *lieu of* notice.
73. The clause, states that termination would be in accordance with the 1st Respondent's documented disciplinary process, which the Respondents concede in their evidence, was not followed.
74. Without clearly stated reasons in the letter of termination, the 1st Respondent advanced a potpourri of reasons in its Pleadings, Evidence and Submissions, to justify termination. These reasons were not established in the evidence given by the CEO.
75. There were allegations of late reporting. The CEO conceded that he did not exhibit the biometric report, which would have shown a record of the Claimant's attendance. There were allegations of poor performance. The CEO conceded that one of the appraisal forms relied on by the 1st Respondent, was not signed by the Claimant and his supervisor. It was conceded by the CEO that the 1st Respondent has PIP in its performance management policy, and that the Claimant was never placed on PIP.
76. The CEO agreed with the evidence of the Claimant, that audits carried out by the Claimant, were preceded by an audit work plan, at the beginning of the audit period. He conceded that the Claimant had prepared audit reports promptly, during the tenure of the previous CEO, after the previous CEO approved the work plan. Asked if he gave his approval of the audit work plan submitted to him by the Claimant, the 2nd Respondent told the Court, "I cannot recall if we exhibited documents showing approval."
77. The CEO defaulted in approving the audit work plans submitted by the Claimant, and it cannot have been a valid reason justifying termination, when the Claimant failed to carry out internal audit and present audit reports. Auditing depended on the approval of the work plans by the CEO.



78. The 1st Respondent did not establish the allegations of poor performance, in accordance with the standards laid down in *Peter Kamau Mwaura & Another v National Bank of Kenya and Jane Samba Mukala v Ol Tukai Lodge Limited* [citations above].
79. These and other allegations floated by the 1st Respondent in its Pleadings, Evidence and Submissions were never specifically put to the Claimant, and were not established through the evidence availed to the Court by the 1st Respondent. The letter of termination was silent on the reasons for termination, beyond invoking clause 11 of the Claimant's contract.
80. Termination was not based on valid reasons, and was unfair.
81. Remedies. The Claimant was offered terminal benefits calculated at Kshs. 263,283, comprising salary for days worked in April 2019, notice and pending leave. The computation was not disputed by the Claimant and there is no reason why he did not collect his cheque, even as he pursued the rest of the Claim. He is at liberty to collect his cheque as offered by the 1st Respondent.
82. He was similarly offered his certificate of service, and the Court does not think there is need to order the 1st Respondent to release the certificate of service.
83. Termination was faulty on procedure and in substance. The Claimant had worked from 1st April 2016 to 18th April 2019, a period of 3 years. Clause 15 of his contract set retirement age at 60 years. He expected to continue serving for another 29 years, to the age of retirement. He did not cause, or contribute to, the circumstances leading to termination of his contract. It is not clear from the record whether he sought other auditor jobs in the labour market after termination, in mitigation of his loss of employment. He is granted equivalent of 5 ½ months' gross salary in compensation for unfair termination, at Kshs. 990,000.

It is ordered: -

- a. The Claim against the 2nd Respondent is declined with no order on the costs.
- b. It is declared that termination was unfair.
- c. The 1st Respondent shall pay to the Claimant compensation equivalent of the Claimant's 5 ½ months' gross salary at Kshs. 990,000.
- d. No order on the costs.
- e. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 31ST DAY OF JANUARY 2024.

JAMES RIKA

JUDGE

