



**Sikuku v AIC Cure International Hospital Kijabe (Cause 1055 of 2018)
[2024] KEELRC 354 (KLR) (23 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 354 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1055 OF 2018
SC RUTTO, J
FEBRUARY 23, 2024**

BETWEEN

ANNE OSIMBO SIKUKU CLAIMANT

AND

AIC CURE INTERNATIONAL HOSPITAL KIJABE RESPONDENT

JUDGMENT

1. The instant Claim was commenced through a Memorandum of Claim which was subsequently amended on 28th April 2023. It is the Claimant's case that she was employed by the Respondent on 12th January 1998 as an Administrative Assistant. She avers that she was promoted to the position of Human Resource Officer and later demoted to the position of Medical Records Clerk, a position she held at the time of her termination. According to the Claimant, the Respondent unlawfully and maliciously terminated her employment on 3rd August 2017. Her claim against the Respondent is for the sum of Kshs 3,948,228.00 constituting compensatory damages for unlawful termination, house allowance supplementation, notice pay, leave pay, unpaid salary for 2 days in August 2017 and loss of expected pension. She further seeks an order for issuance of a Certificate of Service as well as general damages for discrimination based on religion.
2. The Respondent countered the Claim through its Amended Response dated 18th May 2023 in which it avers that the Claimant's termination was not unfair and was as a result of her deteriorating conduct. Consequently, the Respondent has asked the Court to dismiss the suit with costs.
3. During the hearing which proceeded on 12th October 2023, both parties tendered oral evidence.



Claimant's Case

4. The Claimant testified in support of her case and at the outset, sought to adopt her witness statement, the initial list and bundle of documents as well as the supplementary list and bundle of documents to constitute her evidence in chief.
5. In her evidence, the Claimant stated that since she joined the Respondent organization, she had worked under five (5) different Executive Directors with no complaints regarding her conduct, performance and attitude deeming good and loyal employee to the organization.
6. Her staff file had been clean for a record eighteen (18) years until towards the end of the year 2016 when the sixth (6th) Executive Director suspended her from work for one month. When she returned to work from the suspension on 12th January 2017, she was denied access to her office. What followed was a demotion letter from her position as the Human Resource Officer to the position of Medical Records Clerk Out Patient Department.
7. She avers that the demotion to a junior position was done by the Respondent unilaterally without consulting her.
8. The Claimant further stated that towards the end of July 2017, she was called for a meeting with the new Human Resource Manager and Operations Manager. She was informed of the agenda and one of the issues was her character and attitude at the workplace.
9. The Human Resource Manager then informed her that there would be a follow up meeting on 1st August 2017. The subsequent meeting was attended by a larger panel and the agenda was similar to that of the meeting of 28th July 2017.
10. After reading out the agenda, she was asked to respond on each point, which she did. The meeting was adjourned and she was informed that they would get back to her during the course of the week, so she continued working.
11. It was the Claimant's further evidence that on 3rd August 2017, when she reported to work, she was called by the Human Resource Manager and given a letter of termination from employment. She contends that she is yet to receive any severance payment from the Respondent and the offer she received came about only after she instructed her lawyers to write a demand letter to the Respondent.
12. According to the Claimant, the Respondent's management started raising issues with her one month after she had reported back to work from maternity and annual leave in the month of January 2016. In the preceding months of the year 2016, there was a litany of complaints by the management against her sick leave and thereafter the said disciplinary action against her commenced.
13. The Claimant further averred that the Respondent's Executive Director claimed that she was refusing to cooperate with other employees in attending and participating in prayer meetings and bible studies and that she was always on her phone.
14. The Respondent's Executive Director on numerous occasions compelled her to practice AIC African Inland Church related activities not part of her job description and against her Pentecostal Evangelistic Fellowship Church Africa (PEFA) denomination practices thus violating her right to religion.
15. She always endeavoured to comply with the Respondent's Executive Director's demands of attending to prayers and bible studies and quite often, used the bible Application on her phone to follow the scriptures.



16. In an incessant and calculated scheme to unduly and unlawfully terminate her services, the Respondent's Executive Director accused her of being on her phone instead of reading scriptures from the bible. This was constructed and painted by the Respondent as unacceptable behavior without a shred of supporting evidence or iota of reason, but otherwise serving the pre-determined goal of terminating her services unlawfully.
17. She was a member of the Respondent's pension scheme which was under KENINDIA Assurance Limited. Around 20th March 2018, she was informed by KENINDIA Assurance Limited that the Respondent had cleared her from their pension scheme and the implication is that her pension contribution alongside the Respondent's contribution towards her pension was now under KENINDIA Assurance Limited. The Claim discharge voucher from KENINDIA Assurance Limited indicates that her exit from the Pension Scheme was 31st July 2017. That she has not been able to keep up with the Pension contributions at KENINDIA Assurance Limited because she is yet to get another job.
18. She is 43 years old and her efforts to look for a job have been futile. As a result of the foregoing, her well-being has greatly been affected negatively and she has been having financial difficulties since her termination.

Respondent's Case

19. The Respondent called oral evidence through Ms. Ruth Wangui Kariuki, its Human Resource Manager, who testified as RW1. Ms. Kariuki sought to rely on the Amended Response, the initial list and bundle of documents as well as the supplementary list and bundle of documents filed on behalf of the Respondent to constitute her evidence in chief.
20. It was RW1's evidence that the Claimant's demotion was as a result of her deteriorating conduct while she was in the role of Human Resource Manager. That over the course of several audits, performed in 2016, it was made clear that the Claimant was not performing her duties.
21. That there are corrective reports ranging from March 2016 to September 2016 touching on the Claimant's performance. The Claimant received the reports and did not improve her performance.
22. RW1 further stated that over the course of 2016, the Claimant's conduct deteriorated and it was impossible to work with her. That at some point, the Claimant introduced a third party who was an intern at the organization, and as a result, information was leaked from the Respondent's office. Further, the Claimant created a hostile work environment and was insubordinate to her employers including failure to respond to summons for meetings. She was also absent from work without giving her supervisors prior explanation of her absence.
23. Due to the Claimant's gross misconduct, the Respondent decided to send her on suspension through a letter dated 7th December 2016. When she returned from suspension, she purported to give cause as to her gross misconduct by way of a letter. The Claimant's reasons for her conduct were mere falsehoods and she showed no signs of remorse or intent to improve her conduct. As the Claimant's explanation did not satisfy the Respondent, she was demoted to the position of Medical Records Officer.
24. The Respondent remained hopeful that the Claimant's behaviour would improve. When the demotion did not bear the intended fruit, the Respondent wrote to the Claimant to formally clarify its expectations of her and held meetings with her. The meeting of 28th July 2017 was one of the several efforts that had been made to address issues with the Claimant following her demotion.



25. RW1 further stated that the Respondent made final efforts in a meeting of 1st August 2017, in which she merely gave further excuses about her misconduct and even denied the communication that had been made to address issues.
26. In view of all the efforts that had been made, the Respondent was eventually forced to terminate the Claimant's employment by way of a letter dated 3rd August 2017. She was informed of the reasons for her termination from employment.
27. The Respondent was awaiting the Claimant's clearance and return of working materials before making final payment of the terminal dues and issuance of the Certificate of Service.
28. The Respondent thereafter drew a cheque in favour of the Claimant and issued her with a Certificate of Service, both of which she has refused to collect despite communication from the Respondent.
29. According to RW1, the Claimant was terminated for valid reasons and due process was followed.

Submissions

30. On behalf of the Claimant, it was submitted that there was no indication on the letter of suspension that she was being suspended to allow investigations that would not have been conducted while having her in office. Further, that the suspension was not based on any policy, law or guidelines as they were not quoted in the suspension letter. It was further submitted that there was no investigation that followed the suspension and as such, the same was unlawful. In support of the Claimant's position, reliance was placed on the case of Fredrick Saundu Amolo v Principal Namanga Mixed Day Secondary School & 2 others (2014) eKLR.
31. It was further submitted that the Respondent's witness confirmed that her views were not sought prior to the Claimant's demotion.
32. Citing the case of Elizabeth Kwamboka Khaemba v BOG Cardinal Otunga High School Mosochi & 2 Others (2014) eKLR, it was further argued that the unilateral change of employment terms by an employer is tantamount to unfair and unlawful termination. It was further posited that the Claimant's demeaning demotion to a Records Clerk was unlawful. On this score, the Court was invited to consider the determinations in Richard Kioko Kakuli v Sai Raj Limited (2020) eKLR and Board of Governors, Cardinal Otunga High school, Mosochi & 2 others v Elizabeth Kwamboka Khaemba (2016) eKLR.
33. It was further submitted on behalf of the Claimant that the acts of the Respondent from suspension, demotion and termination, violated Sections 41-45 of the *Employment Act*. It was contended that the Claimant was not afforded an opportunity to know her charges in order to mount a defence and that it was apparent from the outset that the Executive Director disliked her, considered her guilty of hypothetical gross misconduct and sentenced her to an eventual termination.
34. The Claimant further argued that the evidence furnished by the Respondent was not sufficient to justify the grounds for her termination. That the allegations were from the period when she was a Human Resource Officer and which allegedly led to her demotion. In further submission, it was stated that there was no evidence furnished by the Respondent linking the Claimant to any violation of policy or codes and for these reasons, the Respondent did not justify its reasons for terminating her.
35. The Respondent on the other hand submitted that the Claimant's termination occurred on 3rd August 2017 hence all claims should have been brought in accordance with Section 90 of the *Employment Act* on or before 3rd August 2020. In support of this position, the case of John Kiiru Njiri v University of Nairobi (2021) eKLR was cited. The Respondent further submitted that the new claims introduced



in the Claimant's Amended Memorandum of Claim are clearly being pursued after the three-year limitation period provided under the Act.

36. The Respondent further submitted that at the point of the Claimant's suspension, it had sufficient reasons under law to terminate her employment but it chose not to take this action.
37. Anchoring its argument on the case of *Mutwol v Moi University* (Civil Appeal 118 of 2019) (2022) KECA 537 (KLR), it was the Respondent's position that the Claimant's letter of suspension clearly stated that the duration of the suspension was for one month and it was to provide for an opportunity to review her performance. It was further submitted that the act of suspension was thought out and came after the Claimant frustrated attempts to have discussions between the two parties.
38. It was the Respondent's further submission that the Claimant declined to take prior opportunities provided to her to defend herself and continued to demonstrate gross misconduct and insubordination. The Respondent contended that it would therefore be unreasonable for it to continue allowing the Claimant to work as she had proven to be uncooperative to its attempts to conduct internal investigations into her misconduct.
39. The Respondent maintained that the suspension was done in compliance with the law and the Claimant is deliberately misleading the Court by stating that she received no notice as to its concerns, the reasons for her suspension and how she could defend herself.
40. Regarding the Claimant's demotion, the Respondent maintained that the same was done to assign her less responsibility as a Medical Records Clerk while allowing her to rectify her misconduct and underperformance. It was the Respondent's further submission that the terms of the Claimant's employment were largely maintained save for her job description as it did not want to make a drastic change to her standard of living.
41. It was the Respondent's further submission that the act of demotion was done in good faith despite the background of a non-compliant employee who continued to be insubordinate and ignored attempts of consultation between parties.
42. The Respondent further argued that the termination of the Claimant was not the first resort as it had come after a prolonged duration of trying to consult, retain and rectify its legitimate concerns with her.

Analysis and Determination

43. Flowing from the pleadings by both parties, the evidence on record, as well as the rival submissions, the following issues stand out for the Court's determination: -
 - i. Whether the claims in the Amended Memorandum of Claim are time barred;
 - ii. Whether the Claimant's demotion was justified;
 - iii. Whether there was a justifiable reason to terminate the employment of the Claimant;
 - iv. Whether the Claimant was afforded procedural fairness prior to termination; and
 - v. Is the Claimant entitled to the reliefs sought?

The question of time bar

44. The Respondent has submitted that the claims introduced by the Claimant in her Amended Memorandum of Claim are time barred having been brought after the statutory three-year period stipulated under Section 90 of the *Employment Act* (Act).



45. The claims in question are; one month in lieu of notice, leave allowance (1999-2010), unutilized leave days (1999-2010), unpaid salary (2 days in August 2017), unutilized leave days and general damages for discrimination based on religion.
46. It is not in doubt that the claims in question flow from the same set of facts and circumstances enumerated in the initial Memorandum of Claim. Under the doctrine of relation back, where a claim or defense asserted in the amended pleading arose out of the conduct or transaction set forth in the original pleading, the amendment relates back to the date of the original pleading.
47. On this score, I gather support from the case of Thomas Owen Ondiek & another v National Bank of Kenya Limited & another [2015] eKLR, in which the Court found as follows:

“ 19. We also reject the respondents’ contention that the 2nd appellant’s claims for loss of Kes.824,800/= in cash and loss of business at the rate of Kes.5/= for every Kes.1/= invested were statute barred under the *Limitation of Actions Act*. This is because having been embodied in the further amended plaint, which was apparently filed with leave of the court and/or with consent of the respondents, under the doctrine of relation back, those claims are deemed to have been lodged at the time of filing the original plaint. See Eres N.V. & Another-Vs- Peschaud & Cie International S.A. & Others. Msa HCCC No. 187 of 1994, in which, citing with approval Lord Denning’s decision in Mitchell v. Harris Engineering Co. Ltd [1967] 2 ALL ER 683 and Biron, J. in Motokov v. Auto Garage [No.2] [1971] EA 33 the court stated the doctrine of relation back to be that “...once amended, a pleading speaks from the date it was originally filed and not from the date of amendment...”

48. Applying the above determination to the case herein, it is this Court’s finding that in principle, the claims relating to notice pay, leave pay and unpaid salary cannot be termed as time-barred.
49. In any event, it is notable that the said claims constitute the Claimant’s terminal dues computed for payment by the Respondent.

Demotion

50. From the record, the Claimant was suspended on 7th December 2016. The reasons for the suspension was insubordination, negligence of responsibilities, absence from work and unacceptable behavior. She was asked to show cause why disciplinary action should not be taken against her.
51. The record bears that the Claimant responded to the allegations raised in the letter of suspension through her letter dated 12th January 2017. Subsequently, she was issued with another letter dated 16th January 2017 notifying her of the decision to demote her from the position of Human Resource Manager to Medical Records Clerk. Consequently, her house allowance was reduced from 25% of her gross salary to 20% of her gross salary and she was issued with a new job description reflecting her new roles.
52. As it is, the decision to demote the Claimant was a sanction against her flowing from a disciplinary process. Therefore, it was necessary that the Respondent affords the Claimant a fair hearing before taking such a disciplinary action against her.



53. On this issue, I subscribe to the position taken by the Court in the case of *Richard Kioko Kakuli v Sai Raj Limited* [2020] eKLR, thus:
- “ A warning and a demotion are both disciplinary measures which can only be taken against an employee after being taken through a disciplinary procedure and found guilty.
- An employer is therefore required to take an employee through disciplinary process before a decision to demote or issue a warning letter is arrived at.”
54. Aside from the Claimant’s explanation to the allegations raised in the letter of suspension, there is no evidence that she was given audience to ventilate her defence. Whereas the Claimant’s letter of demotion made reference to a disciplinary committee meeting of 13th January 2017, there was no evidence by way of a record of the disciplinary meeting to confirm that the said meeting actually took place and that the Claimant was afforded a fair chance to ventilate her case.
55. What’s more, the Respondent did not demonstrate that it served the Claimant with a notice inviting her for a disciplinary hearing on 13th January 2017. It was further not proved that the Claimant was advised to attend the disciplinary hearing in the company of a fellow employee of her choice or a union representative.
56. In light of the foregoing, I am led to conclude that the Respondent has failed to prove to the requisite standard that the decision to demote the Claimant was undertaken within the confines of a fair process.
57. Further to the foregoing, the Respondent did not prove the substance of the allegations leading to the Claimant’s demotion. In her response to the letter of suspension, the Claimant denied receiving the email of 2nd December 2016 from the Respondent’s Executive Director inviting her for a meeting. She further denied receiving a call from the Respondent’s Executive Director, to that effect.
58. From the record, there is no evidence that the email in question was sent to the Claimant hence confirmation that her failure to attend the meeting amounted to insubordination on her part.
59. Additionally, the Claimant explained her absence from duty by stating that she had attached a doctor’s sick leave sheet in regards to her son’s sickness. She further referred to the short messages she had sent to the Executive Director in that regard, between the 1st and 5th of December 2016. Again, there was no evidence from the Respondent’s side to contradict the Claimant’s position.
60. In total sum, the Respondent did not present evidence to justify that indeed, it had valid reasons to take disciplinary action against the Claimant by way of a demotion in rank and reduction in remuneration.
61. Over and above, the Respondent did not exhibit a Code, Policy, Manual or such other document governing its Human Resource practices, to demonstrate that a demotion was one of the disciplinary sanctions it was permitted to undertake in the circumstances.
62. All in all, I find that the Respondent has not proved that the decision to demote the Claimant was justified.

Justifiable reason to terminate?

63. The starting point in determining this issue is Section 43(1) of the Act which requires an employer to prove reasons for termination and failure to do so, such termination is deemed to be unfair. Further to that, Section 45 (2) (a) and (b) of the Act provides that a termination of employment is unfair if the employer fails to prove: -



- a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason-
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; ...
64. Fundamentally, the reason for termination of employment ought to pass the “fairness and “validity” test.
65. Back to the case herein, it is discernible from the Claimant’s letter of termination that the reasons for her termination ranged from her continued lack of cooperation, creating unnecessary tension at the workplace and her continued refusal to carry out lawful and reasonable instructions that would make working with her easy. For context purposes, I will reproduce the said letter of termination in part:

“Dear Ann,

RE: Termination of Employment Contract

In reference to the disciplinary committee meeting held today, I regret to inform you that your employment contract has been terminated effective 3rd August 2017.

I refer to our meeting on 1st August 2017 that was attended by you and Senior Management Team to discuss your behaviour over time. During the meeting, we discussed different areas of concern greatly affecting how you relate and conduct yourself at the hospital.

We spoke about your continued lack of cooperation over the last seven months despite any level of support provided, creating unnecessary tension at the workplace. Refer to the discussion with your Senior Manager dated 5th June 2017 and a follow up email on 12th June 2017. Deliberate refusal to cooperate and engage has made it hard for other employees even at senior management to interact with you in relation to your work.

As discussed during the meeting, your conduct is willful or deliberate behavior creating an image to different stakeholders that is inconsistent with the hospital policies.

You have continually refused to carry out lawful and reasonable instructions that would make working with you easy. Your role requires you to be in contact with many people and there are many instances that were made known to you in which you have caused embarrassment even to other staff.

We consider that your actions constitute serious misconduct warranting termination of the contract between the hospital and yourself...”

66. What is apparent from the Claimant’s letter of termination is that the allegations levelled against her and which constituted the reasons for her termination are general and lacking in particulars. Here is why. The Claimant was accused of lack of cooperation. That notwithstanding, the instances when the Claimant was uncooperative were not provided. Further, the Claimant was accused of refusing to carry out lawful and reasonable instructions. Again, no particulars were given.
67. Given the generality of the allegations against the Claimant, I cannot help but question in what way did the Claimant fail to cooperate at the workplace. Further, what instructions did the Claimant refuse to carry out?



68. As a matter of fact, failure by the Respondent to provide better particulars of the reasons leading to the Claimant's termination makes it impractical to evaluate and analyse the said reasons and determine whether the same were valid and fair within the meaning of Section 45(2) (a) and (b) of the Act.
69. The Court of Appeal in the case of *OI Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR, found that the allegations against the employee in that case were too general hence termed his termination as unfair.
70. Indeed, nothing would have been easier than for the Respondent to state in clear terms the instances where the Claimant had shown lack of cooperation and failed to carry out lawful and reasonable instructions.
71. In addition to the foregoing, the Respondent was required to prove the substance of the allegations against the Claimant.
72. In this case, there was no evidence that the Claimant had been issued with lawful and reasonable instructions but failed to carry out the same. Similarly, there was no evidence that her cooperation was lacking at the workplace and that she had created unnecessary tension.
73. All things considered, the Respondent did not present any evidence to substantiate the reasons leading to the termination of the Claimant's employment.
74. Revisiting Section 45(2) (a) and (b) of the Act, it is clear that the burden was on the Respondent to prove the reasons for the Claimant's termination from employment. However, it failed to discharge its evidential burden.
75. In light of the foregoing, it is this Court's finding that the Respondent has failed to satisfy the requirements of Section 43(1) read together with Section 45(2) (a) (b) of the Act and as such, it has not proved that there was a justifiable cause to warrant termination of the Claimant's employment.

Procedural fairness?

76. Section 45(2) (c) of the Act provides that for termination to be fair, it ought to be in line with a fair process. Section 41(1) of the Act spells out the requirements of a fair process. This generally entails notification and hearing. In this regard, an employer is required to notify an employee of the allegations he or she is required to respond to and thereafter grant him or her the opportunity to make representations in response to the said allegations. The employee is also entitled to be accompanied by a fellow employee or a shop floor union representative of own choice during such explanation.
77. In this case, the record bears that the Claimant attended a meeting on 28th July 2017 and subsequently on 1st August 2017.
78. In the meeting of 28th July 2017, it was indicated that the agenda item was presented to the Claimant and that she was given an opportunity to address the same but she declined. Another meeting was subsequently scheduled for 1st August 2017.
79. In the meeting of 1st August 2017, the Claimant was presented with the complaints raised against her. These complaints were devotion participation and engagement with co-workers and the Senior Management Team. The Claimant's responses to these complaints were recorded.
80. What is not apparent from the record is how the Claimant was informed of the allegations raised against her. In this regard, there is no evidence that the Respondent notified her of the allegations she was to



face beforehand and that it was contemplating termination of her employment on account of the said allegations.

81. Further, there is no evidence that she was advised of her right to be accompanied to the hearing by a colleague or a union representative.
82. In sum, there is no evidence on record that the Claimant was issued with a notice to show cause or an invitation to attend the disciplinary hearing.
83. This leads me to question whether the Claimant was aware of the allegations she was to face at the disciplinary hearing. Was she notified that the allegations she was to answer to are similar to those raised in the meeting of 28th July 2017? Did she even know that she was going in for a disciplinary hearing and that termination of her employment was being contemplated?
84. The foregoing issues cast doubt on the Respondent's version that the Claimant was lawfully terminated from employment.
85. What's more, it is notable that the allegations levelled against the Claimant at the meeting of 1st August 2017 are at variance with the reasons for her termination. For instance, in the meeting of 1st August 2017, the Claimant was not faced with the allegations of refusing to carry out lawful and reasonable instructions. Fundamentally, the reasons for the Claimant's termination did not flow from the meeting of 1st August 2017.
86. In light of the foregoing, I cannot help but find that the Respondent has not proved that it acted in compliance with the spirit of Section 41 of the Act. To this end, it failed to discharge its burden under Section 45(2) (c) of the Act. Consequently, the Claimant's termination from employment was unlawful.

Reliefs?

87. As the Court has found that there was no justified reason to terminate the Claimant's employment and that the process applied in terminating her was not in consonance with the requirements under Section 41 of the Act, she is awarded one (1) months' salary in lieu of notice and compensatory damages equivalent to eight (8) months of her gross salary. This award takes into account the length of the employment relationship and the circumstances attendant to the Claimant's termination.
88. Having found that the Claimant's demotion was not justified, she is entitled to be paid house allowance which was withheld during the period she was demoted.
89. The Claimant is further entitled to unpaid salary for two (2) days in August 2017, there being no evidence that the same was paid to her.
90. With regards to compensation for unutilized leave days, the leave records exhibited by the Respondent indicate that she had outstanding leave days totaling 9 as at 6th December 2016. Therefore, upon her termination on 3rd August 2017, her outstanding leave days upon being prorated were 12. In total, she is entitled to compensation for 21 unutilized leave days. In the same vein, the claim for leave allowance for 11 years is declined on account of being time-barred.
91. With regards to the claim for general damages on account of discrimination, the same is declined on grounds that the Claimant did not plead discrimination in her Claim. Save for mentioning instances when she was required to participate in devotions, the Claimant did not indicate anywhere in her claim that she was treated in an unfavourable manner compared to her colleagues on account of her religious



background or beliefs. Indeed, the Court has not been called to determine any aspect of discrimination hence an award of damages in this regard does not lie.

92. The claim for loss of expected pension is similarly declined noting that it is an anticipatory relief in nature. (See the determination in *D K Njagi Marete v Teachers Service Commission* [2020] eKLR).

Orders

93. Against this background, I enter Judgment in favour of the Claimant against the Respondent and she is awarded: -
- a. Compensatory damages in the sum of Kshs 627,267.00 being equivalent to eight (8) months of her gross salary.
 - b. One month's salary in lieu of notice being Kshs 78,408.40.
 - c. Unpaid salary for two (2) days in August 2017, being Kshs 5,227.00.
 - d. Unutilized leave pay for 21 days being Kshs 78,408.40.
 - e. Withheld house allowance from January to August 2017 being Kshs 25,816.00.
 - f. The total award is Kshs 815,127.00
 - g. Interest on the amount in (f) at court rates from the date of Judgment until payment in full.
 - h. The Claimant shall also have the costs of the suit.
94. Since the employment relationship is not disputed, the Claimant is entitled to a Certificate of Service pursuant to Section 51(1) of the *Employment Act*.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2024.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Wanyingi

For the Respondent Mr. Njenga

Court Assistant Millicent Kibet

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

