



Kasina v Mwingi Mwalimu Savings and Credit Co-operative Society Ltd (Cause 1442 of 2016) [2024] KEELRC 305 (KLR) (20 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 305 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1442 OF 2016
JK GAKERI, J
FEBRUARY 20, 2024**

BETWEEN

DAVID KASINA CLAIMANT

AND

MWINGI MWALIMU SAVINGS AND CREDIT CO-OPERATIVE SOCIETY LTD RESPONDENT

JUDGMENT

1. The Claimant commenced the suit by way of a Memorandum of Claim dated 20th July, 2016 alleging that the Respondent unfairly terminated his employment.
2. The Claimant states that he was employed by the Respondent on 26th July, 2010 as a clerk and was later promoted to a Loans Clerk earning Kshs.50,000/= until his termination on the 19th May, 2016.
3. The Claimant avers that on 19th May 2016, he was summarily dismissed without any benefits which decision breached his fundamental rights as an employee as provided under Section 45 of the Employment Act and was against the principles of natural justice.
4. The Claimant avers that arising from the unlawful/ wrongful dismissal he was entitled to payment of terminal and contractual benefits as hereunder;
 - i. Two months’ Salary in lieu of NoticeKshs.100,000/=
 - ii. Service pay/ gratuity for 6 completed years of service 50,000x6Kshs.300,000/=
 - iii. Damages for wrongful termination from employment calculated at (Kshs.50,000 x 12 months) Kshs.600,000/=

Total ClaimKshs.1,000,000/=



5. The Claimant states that as a result of the abrupt, unfair and wrongful termination from his employment he suffered loss, trauma and has been unable to meet his continuing obligations for which he seeks compensation.
6. The Claimant prays for judgment against the Respondent for;
 - a. A declaration that the Respondent's decision to summarily dismiss the Claimant was unlawful and unfair and that the claimant is entitled to payment of his terminal dues and compensatory damages.
 - b. The Respondent be ordered to pay that claimant his terminal and contractual benefits and compensatory damages totalling to Kshs.1,000,000/=.
 - c. Cost of the suit plus interest there one at court rates.
 - d. Any other relief that this Honourable court may deem just and fit to grant.

Respondent's case

7. The Respondent filed a response to the memorandum of claim and a counter claim dated 2nd September, 2016 where it admits that the Claimant was its employee and avers that his services were not satisfactory as he stole/embezzled the sum of Kshs.7,607,432/= belonging to the Respondent.
8. The Respondent states that the decision to terminate the Claimant's employment was not unfair as there existed a fair ground for summary dismissal.
9. The Respondent further states that the Claimant had been implicated by various audit reports in the loss of funds belonging to the respondent in the sum of Kshs.7,607,431/= which the claimant failed to account for.
10. The respondent avers that the Claimant had committed an offence against and to the detriment of the of the employers property which is a ground for summary dismissal under section 44 of the [*Employment Act*, 2007](#).

Counter claim

11. In its counter claim, the Respondent claims the sum of Kshs.7,607,431/= which it alleges that the claimant embezzled or stole from it while serving as a Loans Clerk during the period between 1/1/2015 to 31/10/2015.
12. The Respondent states that the claimant was deployed to the Respondents Kyuso's Desk as a Loans Clerk in charge of disbursement of loans, receipt of deposits and payment of withdrawals to members of the Respondent for the period between 26/2/2010 and 19/10/2015.
13. That an internal audit conducted in October 2015 revealed anomalies in the daily operations at Kyuso Desk which was manned by the Claimant.
14. That the Claimant was transferred from Kyuso Desk to the Head office at Mwingi and a thorough audit conducted which revealed that Kshs.7,607,431/= handed at Kyuso desk could not be accounted for.
15. That the Claimant was suspended on 8/04/2016 and invited to make his representation and defence on the 13/04/2016 and 14/05/2016 but on both occasions, the claimant failed to make any representation and a decision was arrived at to terminate him on the 17th May 2016.



16. That the Claimant was charged at Mwingi in PMCCR 253 of 2016 for stealing by clerk contrary to section 281 of the Penal Code.
17. That the Respondent has suffered loss of Kshs.7,607,431/= embezzled by the claimant.
18. The Respondent prays for dismissal of the claimants cause and entry of judgment against the claimant for
 - a. Kshs.7,607,431/=.
 - b. Costs and interest.

Reply to Respondent's Response to claim and counter claim.

19. The Claimant filed a reply to the Respondent's response and counter claim dated 4th October 2016.
20. The Claimant denies every averment made by the respondent in the statement of Response.
21. The Claimant avers that his arraignment in court vide Criminal Case No.253 of 2016- Mwingi was an afterthought and calculated to frustrate and intimidate him into foregoing his claim for terminal dues entitlement.
22. The Claimant admits that a certificate of service was issued but denies that there was a good cause for the summary dismissal.
23. The Claimant denies the contents of the counter claim and the allegations that he stole and/or embezzled Kshs.7,607,432/= and invites the respondent to strict proof thereof.
24. The Claimant avers that the Respondent deliberately falsified some of the documents and failed to provide him with all the documents requested, making the accounting process impossible.
25. The Claimant prays that the Respondent statement in response and counterclaim be struck out and the judgment be entered against the respondent as prayed.

Claimant's evidence

26. The matter proceeded for hearing on the 11th November 2022 where the Claimant testified in support of the claim by adopting his statement dated 20th July 2016 as his evidence in chief.
27. The claimant stated that he was an employee of the Respondent where he worked in the capacity of a clerk and was summarily dismissed on the 8th April 2016 through a suspension letter on allegation of having lost the sum of Kshs.7.6 million.
28. The witness stated that the Respondent relied on an audit report that was not complete as page 10 had been plucked off and did not include the balance sheet, company expenditure and cashbook.
29. On cross examination, the Claimant stated that he was dismissed unheard and was not allowed to call a member of the union for the meetings he attended.
30. The Claimant stated that he was charged in court but the case was still ongoing in court.

Respondent's evidence

31. In support of the Respondent's case, one Sammy Mwendwa, the Chief Executive Officer (C.E.O) of the Respondent adopted his witness statement dated 22nd September 2016 as his evidence in chief.



32. On cross examination, the witness testified that after the management had presented its reports, the auditors prepared an audit report which revealed malpractices at the Kyuso Desk.
33. The witness further stated that the counter claim was based on the report prepared by the external auditor, D.K Wambua.
34. The witness further stated that the Claimant was supplied with all the documents that he had requested for.
35. RWII, Mr. Justus Ngau also testified in support of the Respondents case and stated that he had been the Respondent's Treasurer for more than 31 years and knew the claimant well.
36. On cross examination the witness stated that the financial report was reflected in the audit report and that he chaired the disciplinary meetings and confirmed that the claimant was supplied with all the documents that he requested for.
37. RWIII, Mr. Daniel Datho also testified in support of the Respondent's case. It was his testimony that when he discovered anomalies, he talked to the Claimant who explained some of them but not others which lead to the preparation of a report.
38. RWIV, Mr. Sylvester Mulinge stated that he was the internal auditor. It was his testimony that he also worked as a reliever teller both at the Head office and at Kyuso Desk.
39. On cross examination, the witness stated that much as he was an auditor he could not audit this particular case as he had been sitting as a teller at the Kyuso Desk.
40. Mr. Denis Wambua Kimanzi, an Accountant and Auditor stated that he undertook an audit and gave a report dated 31st March, 2016 which stated that an amount of Kshs.7,775,431/= from Kyuso Desk was unaccounted for.
41. He stated that since the Claimant would withdraw and make payments and would overstate withdrawals and dispatch less leading to the loss.
42. He stated that the report covered the period October 2015 and 21st March 2016.
43. The witness stated that the report was investigative and not an audit for the SACCO and the same was handed over to the SACCO and was initiated to uncover allegations of financial misconduct.
44. The witness also stated that he was aware that the SACCO held an Annual General Meeting which he attended as an external auditor.
45. That the queries raised during the audit against the claimant were raised formally.

Claimant's submissions

46. The Claimant's counsel isolated four issues for determination
 - i. Whether the termination of the claimant's employment by way of summary dismissal was substantively and procedurally fair.
 - ii. What reliefs is the claimant entitled to?
 - iii. Whether the respondent is entitled to Kshs.7,607,431/= as claimed in the counter claim.



iv. Who should bear the cost of this claim and counter claim.

47. On the first issue, counsel submitted that Section 43(1) of the *Employment Act*, 2007 states that in any claim arising out of termination of contract, the employer shall be required to prove the reasons for termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45”
48. Counsel submitted that the Claimant was unfairly terminated as according to the termination letter he was terminated for failing to account for the society’s fund while he was not supplied with all the documents he requested for and those documents supplied to him had been deliberately and unlawfully altered thereby rendering the accounting process totally impracticable.
49. Counsel submitted that there was no valid reason for termination of the claimant’s employment as the audited reports for the SACCO had been presented to the SACCO Societies Regulatory Authority and no mention was made of any loss of the society funds.
50. Counsel submitted that as regards the procedure, the claimant appeared before the Human Resource Sub-Committee on the 15th April, 2016 and 6th May, 2016 in the presence of KUCFAW officials but the claimant was not notified by the respondent that he was at liberty to bring in his person at the disciplinary hearing.
51. Counsel further submitted that the claimant was not supplied with all the documents contrary to the provisions of Section 41 of the *Employment Act*, 2007.
52. Counsel relied in the holding in *Fredrick Odongo Owengi v CFC Life Assurance Limited* (2014) where the court held;

“The law now requires that before termination of an employee the procedure applicable for termination of employment be followed. This is what amounts to procedural fairness as outlined in section 41 and 43 of the *employment Act* . . .”
53. On the third issue, counsel submitted that the claim for unaccounted cash amounting to Kshs.7,607,431/= was not substantiated at all and the claimant denied any involvement in the alleged loss.
54. Counsel submitted that the audited reports of the SACCO were presented to the regulatory authority and no financial loss or unaccounted funds were reported.
55. Counsel submitted that no evidence was tendered by the Respondent to prove that RW5 submitted any audit queries to the Claimant for substantiation.
56. Counsel further submitted that the respondent failed to prove its counterclaim against the Claimant and urges the court to dismiss the same with costs.
57. Finally, counsel submitted that the Claimant was entitled to the reliefs sought in the memorandum of claim.

Respondent’s submissions

58. Counsel submitted that contrary to the claimants allegations that his last salary was Kshs.50,000/= the payslip for the month of February 2016 showed that his basic salary was Kshs.24,401/=.
59. Counsel further submitted that the Claimant did not reply to the counter claim as required under Rule 13(3) of the Employment and Labour Relations (Procedure) Rules, 2016 and thus do not challenge or



contest the counter claim, which omission was fatal and entitled the respondent to judgment as prayed for in the counter claim.

60. Counsel submitted that the Claimant was suspected to have misappropriated a sum of Kshs.7,607,431/= belonging to the Respondent which was unearthed by the investigative audit report therefore warranting summary dismissal.
61. Counsel further submitted that the claimant was duly informed of the charges he was facing and invited for a disciplinary hearing on the 15th April, 2016 and 29th April, 2016 and on both sessions he attended in the company of trade union representatives. Further, he was supplied with all the documents he required for his defence.
62. It was submitted that the respondent followed the law and gave the Claimant a chance to be heard but he declined to offer his defence which led to the Respondents decision to summarily dismiss him from employment.
63. Counsel relied in the holding in Sani vs JSC (2022) KEELRC4000 (KLR) where the court held that disciplinary hearing or process was not a mini court or criminal trial and should not be hamstrung with technicalities.
64. Counsel urged the court to find that the Respondent complied with the procedural fairness in the dismissal of the claimant.
65. It was the Respondent's submission that the court should not rule in favour of the claimant as there was no basis for the reliefs sought. That the Claimant had not demonstrated why he is entitled to two months' notice, or shown why he is entitled to gratuity yet he was a member of the NSSF. Further that his basic salary was Kshs.24,401/=.
66. Counsel further urged the court to find that the counter claim has been proved to the required standard and award the same to the Respondent.

Determination

67. The issues for determination are;
 - i. Whether the Claimant's employment was unfairly terminated.
 - ii. Whether the Claimant is entitled to the reliefs sought.
 - iii. Whether the Respondent is entitled to Kshs.7,607,431/= as prayed in the counter claim.
68. On the first issue, counsel submitted that the claimant's employment was unfairly terminated for failure by the Respondent to follow the prescribed procedure and give a reason for the termination. The Respondent's counsel on the other hand maintains that due process was followed and the reason for the summary dismissal was failure by the Claimant to account for a sum of money amounting to Kshs.7, 607,431/=.
69. Needless to belabour, the *Employment Act*, 2007 provides the architecture on termination of employment from Notice, reason for termination and proof thereof, validity and fairness of the reason, grounds for summary dismissal, justification of the ground and procedural aspects.
70. The requirements are set out in Sections 35, 41, 43, 44(4), 45 and 47(5) of the *Employment Act*, 2007.



71. In a nutshell, the foregoing provisions are unambiguous that for a termination of employment to pass muster, it must be proved that the employer had a valid and fair reason to terminate the employee's employment and did so in accordance with fair procedure as exquisitely captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR as follows;

“ . . . For a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination.”

72. The Court of Appeal made similar sentiments in *Naima Khamis V Oxford University Press E.A Ltd* (2017) eKLR.

Reason for termination

73. While the Claimant testified that he was summarily dismissed without a reason, the Respondent on the other hand stated that the claimant was terminated on account of having been adversely mentioned in an audit report where money belonging to the Respondent had not been accounted for.

74. It is common ground that the Claimant joined the Respondent on 1st March, 2010 for a fixed term of 6 months renewable and was extended from October 2010 for 2 years, was promoted to Loans Clerk effective 5th August, 2011 and appointed permanently effective 1st March, 2012.

75. The Claimant received a warning letter dated 15th October, 2015 and was transferred from Kyuso to Head Office, Mwingi Town effective 2nd November, 2015.

76. Significantly, an Audit Review by D.K. Wambua & Associates conducted at the instigation of the Respondent's Chief Executive Officer via letter dated 16th October, 2015 found that the sum of Kshs.7,607,431/= was unaccounted for.

77. The report is dated 31st March, 2016.

78. As a result of the revelation by the auditor, the Claimant was suspended and required to account for the funds within 7 days.

79. At its meeting held on 15th April, 2016, the Human Resource Committee of the Respondent's board of directors resolved to extend the duration within which the Claimant could respond to the allegations and be afforded the documents he needed and appear before the committee on 6th May, 2016 as he did not appear on 15th April, 2016 as directed earlier.

80. In an undated letter, the Claimant requested for 10 sets of documents to enable him respond to the allegation and 10 of the documents were availed and the Claimant signed for them.

81. However, by letter dated 29th April, 2016, the Claimant notified the Respondent's CEO, the challenges he was facing in responding to the allegation inter alia he had not been given withdrawal and deposit slips, cash payment voucher receipts and settlement slip, a fact the Respondent admitted.

82. The documents were essential for his response slated for 6th May, 2016.

83. During the meeting held on 13th May, 2016, the Claimant explained that he could not account for the funds as the Audit Report did not have page 10 and Daily journals had been altered. The committee recommended summary dismissal of the Claimant.



84. At its meeting held on 17th May, 2016, the Respondent's board of directors received a report on the Claimant and upheld the committee's recommendation that the Claimant be dismissed with immediate effect effective 18th May, 2016.
85. The Claimant's employment was terminated by letter dated 19th May, 2016 for failure to account for the unaccounted cash and no dues were payable.
86. It is common ground that the Claimant worked at the Kyuso Desk until suspension and was the common face for most of the days covered by the investigation, a fact he admitted on cross-examination.
87. He also admitted on cross-examination that the audit report attributed the unaccounted for funds to him for overstating withdrawals and understating deposits.
88. The Claimant admitted that he attended two meetings but the documents provided were insufficient to account for the monies.
89. RWIII, Mr. Daniel Datho confirmed that when he discovered anomalies, he approached the Claimant who explained only some of them, not all of them and Kyuso had a manual system.
90. Mr. Dennis Wambua Kimanzi confirmed that the Claimant received monies to be deposited in the bank and monies to be withdrawn and would withdraw and make payments.
91. The external auditor confirmed that he prepared the Audit Report from October 2015 to March 2016 and his audit was investigative.
92. The witness explained that while ordinary audits by the external auditor look at the financial statements for purposes of making an independent opinion, other audits may be investigative.
93. That the loss incurred in 2015 was and reported in 2016
94. Finally, the Claimant admitted that he was arrested and charged in Mwingi Criminal Case No. 256 of 2016 which was still pending as at the date of hearing of this suit.
95. RWV testified that he was unaware of the status of the case.
96. Section 43(2) of the [Employment Act](#), 2007 provides that;
- “The reasons or reasons for termination of a contract are the matters that the employer at the time of the termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.”
97. This section obligates the employer to demonstrate that it had a reasonable ground for the belief that there was a reason to terminate the Claimant's employment and the standard of proof is on a preponderance of probabilities as held in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others* (2019) eKLR, by Court of Appeal as follows;
- “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. That is a partly subjective test.”
98. This reasoning comports with the range of reasonableness test in the *Halsbury's Laws of England* and applied by Lord Denning in *British Leyland UK Ltd V Swift* (1981).
99. By letter dated 19th May, 2016, the Respondent terminated the Claimant's employment on the ground of failing to account for its funds despite being granted opportunities to do so.



100. For the foregoing reasons, it is the finding of the court that the Respondent has on a balance of probabilities demonstrated that it had a valid and fair reason to terminate the Claimant's employment.

Procedure

101. As held in *Pius Machafu Isindu V Lavington Security Guards Ltd* (2017) eKLR, the elaborate procedure prescribed by Section 41 of the *Employment Act*, 2007 is mandatory for a termination of employment to pass as fair.

102. As regards the procedural precepts of Section 41 of the *Employment Act*, 2007, in *Postal Corporation of Kenya V Andrew K. Tanui* the Court of Appeal pronounced itself as follows;

“ Four elements must thus be discernible for the procedure to pass muster:-

- i. an explanation of the grounds of termination in a language understood by the employee;
- ii. the reason for which the employer is considering termination;
- iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination are made;
- iv. hearing and considering any representations made by the employee and the person chosen by the employee.”

103. While the Claimant faulted the procedure employed by the Respondent on the premise that he was not informed of his right to avail a witness, the respondent submitted that the procedural requirement were complied.

104. The Claimant was invited to a hearing on the 15th April 2016 by the Human Resource Committee and he attended in the company of Union Representatives and requested to be supplied with documents and the hearing was rescheduled.

105. The Respondent supplied the Claimant with the documents he requested to account for Kshs.7,607,431/= mentioned in the Audit Report but he sought for more time and also requested to be supplied with more documents to assist him account. His request was granted and a hearing date set for 6th May, 2015.

106. However, by letter dated 29th April, 2016, the Claimant stated that the accounting process would not be successful as the Audit Report supplied to him did not have page 10. The Claimant, however availed no evidence to prove that he requested for the complete document or that he raised the issue at the hearing. The committee proceeded with the disciplinary hearing on the 13th of May 2016.

107. The minutes of the Human Resource Committee meeting held on 13th May, 2016 stated that the Claimant did not attempt to account for the funds but stated that the daily journals had been altered and the audited report lacked certain information. That the committee did not find the reasons valid and as a consequence recommended that the Claimant be dismissed from employment.

108. From the minutes, it is clear that the Claimant was accorded an opportunity to prosecute his case and was invited for disciplinary hearing which he attended and participated in.

109. It is common ground that the suspension letter made serious allegations against the Claimant about funds that were unaccounted for at the Kyuso Desk and although some of the documents were availed, the Claimant wrote on 29th April, 2016 requesting for the rest of the documents and identified them



- in his letter to the Respondent's CEO. He needed withdrawal and deposit slips, cash payment voucher receipts and settlement slip.
110. He also complained that the Daily Journal register had alterations.
 111. The Respondent did not respond to the Claimant's letter or avail the documents and RWII, Mr. Justus Ngau Musyimi confirmed as much.
 112. Having requested for the documents in writing, it was incumbent upon the Respondent to avail them as it was the custodian.
 113. The amount allegedly lost at Kyuso Desk was enormous and the Claimant required the documents to respond to the allegation that the funds were unaccounted for.
 114. The right of Claimant to be provided with the documents he required is protected by law as it is one of the precepts of fair hearing.
 115. (See *Postal Corporation of Kenya V Andrew K. Tanui (Supra)* where the Court of Appeal underscored the essence of availment of documents to an employee who is facing allegations by employer.
 116. Although the Claimant's failure, refusal or neglect to respond to the allegations, the inadequacy of the documents supplied by the Respondent notwithstanding, is discreditable, he was entitled to the documents he had requested for and their non-availment by the Respondent vitiated the process.
 117. Although the minutes on record reveal that the meetings were attended by union representatives, their attendance did not deny the Claimant the statutory right to attend the meeting with a colleague of his choice as mandated by Section 41 of the *Employment Act, 2007*.
 118. The Claimant did not invite the union representatives and ought to have been informed that he had the right to be accompanied by a colleague of his choice and adduce evidence during the hearing.
 119. Such a colleague has the right to make representations at the meeting.
 120. In the court's view, the fact that the Claimant was denied the opportunity to attend the hearings with a colleague of his choice and was not informed of his right to adduce evidence thereat vitiated the disciplinary process.
 121. The omission rendered the termination of the Claimant's employment procedurally flawed and thus unfair.

Counter claim

122. The Respondent counter-claims against the Claimant for Kshs.7,607,431/= which is alleged to have been embezzled by the Claimant when he was serving as the Loans Clerk at Kyuso's Desk.
123. As adverted elsewhere in this judgment, the Claimant was charged for stealing by clerk contrary to section 281 of the Penal Code in Mwingi PMCCR No. 253 of 2016 and the matter is pending determination in the criminal court.
124. It requires no emphasis that the standard of proof in a criminal matter is beyond reasonable doubt. While in employment matters, it is on a preponderance of probabilities. More significantly, the Respondent was not obligated to await the outcome of the criminal case before invoking internal disciplinary process.
125. Puzzlingly, the Respondent adduced no evidence of the status of the case including whether the Respondent's witnesses had testified.



126. Similarly, none of the Respondent's witnesses explained how the alleged loss was reported in the Respondent's financial statements.
127. The audit findings in the court's view are not conclusive evidence that the Claimant embezzled the Respondent's money.
128. In sum, the Respondent has failed to prove the counter-claim and the same is dismissed.

On the reliefs sought

SUBDIVISION - i Damages/ Compensation for unlawful termination

129. Having found that the termination of the Claimant's employment was substantively justifiable but procedurally unfair, the Claimant is entitled to the relief under Section 49(1)(c) of the [Employment Act](#), 2007.
130. The court has considered the fact that the Claimant was an employee of the Respondent for a duration of about 5 years and 2 months and had a previous warning. Equally, the Claimant neither expressed his wish to remain in the Respondent's employment nor appeal the decision and did not respond to the allegations made against him. Finally, the Claimant substantially contributed to the termination of employment.
131. In the circumstances, the court is satisfied that the equivalent of two (2) months gross salary is fair.

ii. Two Months' salary in lieu of Notice

132. Having found that the termination of employment was substantively justifiable the prayer for notice pay is unsustainable and is declined.

iii. Service pay/ Gratuity

133. Gratuity is an amount paid by the employer to an employee in appreciation of the services rendered and has a contractual justification. This amount is either provided for in an employment contract or terms of the collective agreement.
134. In the instant case, the Claimant did not adduce any evidence to justify the claim.
135. Service pay and gratuity are patently distinguishable.
136. As regards service pay, a copy of the Claimant's payslip for June 2014 reveals that NSSF deductions were being made by the employer and membership of the NSSF disqualifies him from service pay by reason on Section 35(6)(d) of the [Employment Act](#), 2007.
137. In the upshot, judgment is entered for the Claimant against the Respondent as follows;
 - a. Declaration that termination of the Claimant's employment by the Respondent was unfair.
 - b. Equivalent of 2 months' salary.
 - c. Costs of this suit.
 - d. Interest at court rates from the date hereof till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 20TH DAY OF FEBRUARY 2024



DR. JACOB GAKERI

JUDGE

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 has 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.

DR. JACOB GAKERI

JUDGE

