



**Gaiti v Diakonie Emergency Aid (Cause 956 of 2016)
[2024] KEELRC 867 (KLR) (23 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 867 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 956 OF 2016**

**JK GAKERI, J
APRIL 23, 2024**

BETWEEN

SUSAN WANJIRU GAITI CLAIMANT

AND

DIAKONIE EMERGENCY AID RESPONDENT

JUDGMENT

1. The Claimant commenced the instant suit vide a Statement of Claim filed on 24th May, 2016 alleging unfair termination of employment and violation of constitutional rights and freedoms under Articles 27, 28, 41 and 47 of *the Constitution* of Kenya, 2010.
2. The Claimant avers that she was appointed by the Respondent as its Finance and Administration Manager effective 1st January, 2015 having worked as an Accountant from January 2012 and as Finance and Administration Coordinator until December 2014, at Kshs.292,748.00 per month.
3. It is the Claimant's case that the Respondent terminated her employment by letter dated 21st March, 2016 without cause but afforded the Claimant 3 months' salary in lieu of notice and avers that the termination of her employment was unlawful, wrongful, without evidential basis and unfair.
4. The Claimant avers that the Respondent committed various illegalities which are itemised in the Statement of Claim including absence of a reason for termination, Claimant had a clean record, non-compliance with the prescribed procedure for termination and non-compliance with the Respondent's Manual.
5. It is the Claimant's case that the Respondent's Regional Director, one Mr. Clemens Von Heimendahl had a tyrannical and condescending attitude towards his subordinates and acted maliciously towards her and he and the Claimant disagreed on termination of certain members of staff, poor working relations, refusal to sign Claimant's appraisal and demeaning attitude towards Africans among others.



6. The Claimant prays for;
 - i. A declaration that termination of her employment was unfair within the meaning of Section 45 of the Employment Act, 2007.
 - ii. Special damages of Kshs.3,512,976/= being the equivalent of 12 months' salary.
 - iii. A declaration that the Respondent violated the Claimant's rights and fundamental freedoms protected by Articles 27, 28, 41 and 47 of the Constitution of Kenya, 2010.
 - iv. Reinstatement of the Claimant to her employment.
 - v. Compensation for violation of the Claimant's rights and freedoms under Articles 27, 28, 41 and 47 of the Constitution.
 - vi. Interest on the above at court rates from date of filing this suit.
 - vii. Costs of the suit.
 - viii. Any other or further order as may be just, expedient and necessary in the circumstances of this case.

Respondent's case

7. By its response to the Statement of Claim filed on 29th June, 2016, the Respondent admits that the Claimant was in its employment until 31st March, 2016 and served under an open ended contract terminable by notice of either party.
8. The Respondent avers that the copy of the manual relied upon by the Claimant was undated and unsigned and thus not binding as it had not been approved by the Respondent.
9. It is the Respondent's case that the notice of termination of the Claimant's employment was lawful as it was based on Clause 13.1 of the contract of employment and the Claimant negotiated, approved and was paid the sum of Kshs.630,152/= comprising 3 months' salary, 3.5 annual leave days and 13th month salary.
10. That the Claimant executed the Clearance Form confirming that she had no other claims against the Respondent and the claim herein is barred by estoppel, waiver and compromise.
11. It is further the Respondent's case that the Claimant took 90 days maternity leave from November 2015 to February 2016, annual leave from 18th February, 2016 to 24th March, 2016, 4 days leave from 29th March, 2016 to 1st April, 2016 and was paid for the balance of 3.5 days.
12. The Respondent avers that the Claimant's claims were untruthful, scandalous and unsubstantiated and were defamatory against Mr. Clemens who is not party to this suit and the termination of employment was mutual and fair and the suit herein is unnecessary and an afterthought.
13. The Respondent prays for dismissal of the suit with costs.

Claimant's evidence

14. In her evidence in chief, the Claimant testified that she disagreed with her supervisor on the procedure of terminating an employee and he gave her a harsh feedback.
15. That the termination of employment violated her right to human dignity and was unsure whether the termination of employment was connected with the fact that she was a woman.



16. The witness admitted that she signed the document given by the Respondent as she needed the money to survive and did not consult the supervisor on the termination of employment.
17. On cross-examination, the Claimant confirmed that she also served as the Human Resource Manager and signed the letter after consultations.
18. The Claimant admitted that she was involved in the computation of her dues and took her full maternity leave, annual leave and another 4 days before termination of employment and signed the clearance dated 1st April, 2016 and received payment Kshs.630,152/=.
19. The Claimant confirmed that she had not raised any issue with the Respondent save for appraisal forms.
20. The witness further admitted that the manual had not been approved and was a working draft and was signed on 1st January, 2017.
21. It was her testimony that she had no evidence to prove that her dismissal from employment was based on pregnancy and did not sue Mr. Clemens in person and he had approved her promotion to the Head of Finance & Administration, approved leave days and had not written to anyone on the alleged differences with Mr. Clemens which the Claimant has not disclosed or illustrated the alleged poor work relations of Mr. Clemens.
22. The witness admitted that the document by one Mr. Oyoko Omondi, which she produced as evidence was undated, had no addressee or attachments, was not copied to the Claimant and did not have her name on it.
23. As regards the email from one Wanjiku Munene dated 12th September, 2018, a complaint against Mr. Clemens, the Claimant testified she did not know why it was forwarded to her.
24. As regards the Clearance Form, the Claimant testified that she did not agree that she waived her right to pursue other claims against the Respondent. It was her evidence that she had many financial obligations and needed cash and weighed her options.
25. Finally, the witness confirmed that she withdrew the application for reinstatement.
26. On re-examination, the Claimant testified that the Respondent was using the draft manual.
27. That no reason for termination was given and Oyoko's email made Clemens not return to Kenya.
28. CWII, Mary Wanjiku Munene confirmed that Mr. Clemens promoted the Claimant and extended her term to permanent. That a driver by the name Melaku was not dismissed by Clemens.
29. The witness admitted that she had nothing written about Mr. Clemens and had no personal grudge against him.

Respondent's evidence

30. RWI, Mr. Allan Mulama confirmed on cross-examination that the letter by Mr. Oyoko filed by the Claimant had no date, stamp or addressee and related to May 2017 yet the Claimant left employment in 2016.
31. He testified that the Claimant's performance was flawless and the Respondent invoked Clause 13.1 of the Employment Contract and interacted with the Claimant on the computation of her dues and was unaware of the alleged disagreements between the Claimant and the Regional Director, Mr. Clemens.



32. On re-examination, the witness testified that he had not seen any documented disagreement between the Claimant and Mr. Clemens.
33. That the documents on pages 7 – 17 related to the Claimant’s clearance and he was involved in it and the Claimant signed the discharge on record and it discharge both parties or was a waiver.

Claimant’s submissions

34. The Claimant’s advocate submitted on unfair treatment and discrimination, unfair termination of employment, violation of rights and fundamental freedoms, reliefs and costs.
35. On the alleged unfair and oppressive treatment, counsel urged that the fact that Mr. Samuel Wangoha and Mr. Clemens did not testify showed that the Respondent had an arrogant and condescending attitude towards the Claimant.
36. Counsel submitted that the Claimant had adduced evidence of unfair and oppressive treatment and had as such proved the same.
37. On termination, counsel cited the Respondent’s Manual to submit that the Respondent provided no reason for termination of the Claimant’s employment as ordained by the provisions of Section 43 of the *Employment Act*, 2007.
38. Reliance was made on the Supreme Court decision in Kenfreight (E.A) Ltd V Benson K. Nguti (2019) eKLR where the court upheld the findings of the decision of the Court of Appeal on termination of employment to urge that the Claimant had proved that her termination from employment was unfair.
39. As regards violation of rights and fundamental freedoms, counsel submitted that the Statement of Claim identified the Articles allegedly violated and the particulars which according to counsel the Respondent did not rebut.
40. Counsel submitted that the Claimant had proved the violations as no due process was followed, her right to human dignity was violated, as was the right to fair labour practices and fair procedure.
41. On the reliefs sought, counsel submitted that the Claimant was entitled to all the reliefs prayed for.
42. In urging the Claimant’s case, counsel cited the sentiments of the court in Mokaya V Kithure Kindiki (2021) eKLR, Githuru V Package Insurance Brokers Ltd (2021) KESC 12, Kenfreight (EA) Ltd V Benson K. Nguti (Supra) and Baringo County Government & another V Raiply Woods (K) Ltd & 3 others (2023) KECA 196.

Respondent’s submissions

43. Counsel for the Respondent submitted on termination of the Claimant’s employment, alleged violation of constitutional rights, effect of the discharge form, reliefs sought and costs.
44. Counsel urged that the Claimant had failed to prove her case on a balance of probabilities as the Respondent invoked Clause 13.1 of the Contract of Employment and paid the Claimant 3 months’ salary in lieu of notice, she participated in the computation of dues and signed the discharge certificate dated 1st April, 2016 and raised no complaint or reservations.
45. Counsel submitted that the Clearance Certificate was a complete discharge of the Respondent from past, present and future claims or allegations and the Claimant could not feign ignorance of the implications of the document she signed.



46. Reliance was made on the sentiments of the court in *Thomas De La Rue V David Opondo Omutelema* (2013) eKLR on the test to be applied in determining the implication of a discharge voucher or settlement agreement as were the sentiments in *Jane Vuligwa V Good Earth (Group) Ltd* (2021) eKLR as well as *Isaac Tito V Organic Growers & Packers Ltd* (2022) eKLR among others to urge that the clearance form signed by the Claimant was a binding agreement between the parties.
47. Counsel further submitted that the Claimant made unsubstantiated personalized attacks on Mr. Clemens but did not sue him or join him in the suit and did not raise the complaints she had against him for redress for the duration of her employment and cannot use the invoiced concerns at this point.
48. That the report by Oyoko Omondi had no addressee and was not copied to the Claimant and was inadmissible for want of authenticity and amounted to hearsay and was authored long after the Claimant had left employment.
49. That the emails from Wanjiku Munene were shared long after the Claimant had left employment and in abuse of confidentiality and no investigation report was attached.
50. That Wanjiku Munene made a false statement about Mr. Melaku Abera who is still an employee of the Respondent.
51. Counsel urged that since the alleged racial and gender biases were not reported to anyone and Mr. Clemens deputy was Rose Muthama, a lady and he promoted the Claimant and approved her annual and maternity leave, the alleged complaints were unsustainable as were the alleged violations of constitutional rights.
52. In conclusion, counsel submitted that since the Claimant signed a discharge voucher, the issue of termination of employment was moot and the allegations of discrimination, racial and violation of constitutional rights had not been proven and was equally academic by virtue of the waiver.

Findings and determination

53. It is common ground that the Claimant was an employee of the Respondent from January 2012 to 21st March, 2016 when her employment was terminated by the Respondent by invoking Clause 13.1 of the Contract of Employment which permitted either party to terminate employment by 3 months' notice or pay in lieu of notice.
54. The Respondent opted for the latter. Although the Claimant refused to sign the letter of termination, she signed the same after consultations and actively participated in the computation of her dues which the Respondent paid by cheque.
55. It is also not in doubt that Mr. Clemens was the Claimant's supervisor, though unclear for how long. What is clear however, is that the Claimant initially worked as an Accountant for one (1) year, rose to Finance and Administrative Co-ordinator in early 2013 and to the Finance and Administration Manager in early 2015, an undoubtedly steady rise under Mr. Clemens.
56. As adverted to elsewhere in this judgment, the Claimant is challenging the termination of employment for non-compliance with the provisions of the *Employment Act*, 2007 and violations of *the Constitution* of Kenya, 2010, specifically Articles 27, 28, 41 and 47.
57. After careful consideration of the pleadings, evidence on record and submissions by counsel, the issues for determination are;
 - i. Whether the Respondent violated the Claimant's rights and fundamental freedoms under Articles 27, 28, 47 and 47 of *the Constitution*.



- ii. Whether termination of the Claimant’s employment was unfair.
 - iii. Whether the Claimant waived her rights to pursue further claims against the Respondent.
 - iv. Whether the Claimant is entitled to the reliefs sought.
58. On the 1st issue, the Claimant avers that she was denied the right to equality and freedom from discrimination, her right to human dignity was infringed, her right to labour practices was violated and was denied the right to fair administrative action.
59. As regards discrimination, the Claimant testified that it commenced when she and Clemens disagreed on various issues which she neither disclosed in her witness statement nor in oral testimony.
60. The Claimant mentioned that one of the issues was on termination of employment of employees as the supervisor did not follow procedure.
61. Regrettably, the Claimant cited no employee or instance where she allegedly disagreed with the supervisor on a termination.
62. Similarly, the Claimant never raised any complaint against Mr. Clemens or confided in anyone about the alleged discrimination.
63. Equally, neither the witness statement nor the oral testimony tabulated or exemplified the alleged discriminatory practices of Mr. Clemens.
64. Put in alternatively terms, the alleged acts or omissions or conduct of Mr. Clemens which amounted to discrimination remain unclear.
65. As held in *Nyarangi & others V Attorney General* (2008) KLR 688;
- “Direct discrimination involves treating someone less favourably because of their possession of an attribute such as race, sex, religion compared to someone without that attribute in the same circumstances.”
66. In *Peter K. Waweru V Republic* (2006) KLR, the court expressed itself as follows;
- “. . . Discrimination means affording different treatment to different persons attributable wholly or mainly to their description, whereby persons of one such description are subjected to . . . restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description . . .
- Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex . . . a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.”
67. Finally, Wilson J. expressed similar sentiments in *Andrews V Law Society of British Columbia* (1989) 1 SCR 321.
68. Both Article 27 of *the Constitution* of Kenya, 2010 and Section 5(3) of the *Employment Act*, 2007 outlaw discrimination generally and in an employment context on the basis of race, pregnancy, sex, marital status, health status, ethnic or social origin, colour, age, disability, religion, culture, dress, language or birth.



69. On cross-examination, the Claimant confirmed that she did not complain about the alleged discrimination she was alleging in court and admitted that she had no evidence to show that the termination of employment was attributable to the fact that she had been pregnant or proceeded on maternity leave and had already given birth by March 2016.
70. In the court's view, the Claimant cannot be heard to say that she could not raise the issue because the Respondent had no formalised complaint procedure. An email to a colleague or any other person would have been credible evidence of the alleged conduct of Mr. Clemens. Necessity is the mother of invention.
71. More significantly, the Claimant admitted on cross-examination that Mr. Clemens approved her promotion to the Head of Finance & Administration and approved all her maternity, annual and other leave without any acrimony.
72. Evidently, the testimony that the Claimant was discriminated due to her pregnancy has no supportive and credible evidence to sustain.
73. In sum, the Claimant availed no credible evidence to show that she was discriminated by Mr. Clemens as against any other employee.
74. The allegation of discrimination is unproven and the court so finds.
75. When the Claimant was asked about how her right to human dignity was violated, she responded as follows;
- “I did not expect termination as I had not underperformed, I was terminated after my maternity leave. It was unclear whether it was connected with my being a woman – Why it happened at that particular moment.”
76. Allegations of Mr. Clemens ill disposition towards leave, off days and family issues were not supported by any evidence as the Claimant confirmed having proceeded on maternity, annual and other leave with Mr. Clemens approval.
77. The allegation that Mr. Clemens spoke ill about the pregnancy of the wife to one Samuel Wangatia was not supported by any credible evidence and did not relate to the Claimant as an employee.
78. As regards the right to fair labour practices, the Claimant adduced no evidence on how the rights envisaged by Article 41 of *the Constitution* of Kenya were infringed or violated or threatened with violation.
79. Finally, the right to fair administration action is enshrined in the provisions of the *Employment Act*, 2007 which an employer is obligated to invoke whenever a termination of employment is contemplated.
80. Of importance, in her supplementary list of documents, the Claimant attached 5 pages of a document entitled; Sacrificial Lambs: The wanton slaughter continues” allegedly written by one Mr. Oyoko Omondi who the Claimant alleged was a former employee of the Respondent.
81. The document appears to be the writer's final submission as he exited the institution and makes all manners of allegations against unnamed persons.
82. The document which is undated was neither sent to the Claimant nor authored in her presence lacks authenticity and ownership for evidential purposes.



83. Similarly, the evidence of CWII is insufficient to prove that Mr. Clemens discriminated against women as no investigation report was availed.
84. Equally, her allegation that Mr. Clemens terminated Mr. Melaku Abera's employment was untrue.
85. From the foregoing, it is the finding of the court that the Claimant has failed to prove on a preponderance of probabilities that her rights and fundamental freedoms protected by the provisions of Articles 27, 28, 41 and 47 of *the Constitution* of Kenya, 2010 were violated by the Respondent.
86. As regards termination of the Claimant's employment, the law is unambiguous that for a termination to pass the fairness test enshrined in Section 45 of the *Employment Act*, 2007, it must be proved that the employer had a valid and fair reason to terminate the employment and that the termination was conducted in accordance with a fair procedure.
87. Put in the alternative, there must have been a substantive justification for the termination and procedural fairness as exquisitely captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR and the Court of Appeal in *Naima Khamis V Oxford University Press (EA) Ltd* (2017) eKLR.
88. Whereas the provisions of Sections 43, 44, 45(2)(a) & (b) and 47(5) of the *Employment Act*, 2007 address the reason for termination or substantive justification, the provisions of Section 45(2)(c) and 41 of the Act address the procedural precepts.
89. The Claimant faults her termination on the premise that the Respondent did not provide a reason for termination and did not comply with the attendant procedure.
90. Admittedly, the letter of termination dated 21st March, 2016 gave no reason for termination of employment.
91. Section 45 of the *Employment Act*, 2007 provides;
1. No employment shall terminate the employment of an employee unfairly.
 2. A termination of employment by an employer 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 employee's conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure.
92. This provision is explicit that an employer must not terminate the employment of an employee unfairly and proceeds to prescribe the essentials of a fair termination of employment.
93. It is common ground that the employer invoked Clause 13.1 of the Contract of Employment which accorded the parties to terminate the agreement by notice or pay in lieu of notice.
94. In determining this issue, the court is guided by the provisions of Section 45 of the *Employment Act*, 2007 and the Supreme Court decision in *Kenfreight EA Ltd V Benson K. Nguti* (Supra) cited by the Claimant's counsel where the court upheld the Court of Appeal decision.
95. In that case, the appellant, the Respondent's employer had invoked the termination clause of the contract of employment and paid the Respondent one month's salary in lieu of notice.



96. The Court of Appeal held as follows;

“The contract of service in this dispute provided for a notice period greater than 28 days. The parties were bound by the terms of the contract of service to the effect that the contract would be terminated by either party giving one month notice or in lieu of notice, the payment of one month salary by either party. Ex facie, the appellant complied with the terms of the contract of service by paying the Respondent Kshs.676,362/= the latter’s one month salary in lieu of notice . . .

The next and more critical question is whether the termination was unfair. . .”

97. The court is guided accordingly.

98. After reviewing the evidence, the Court of Appeal had this to say;

“No one, not even the Respondent himself could be able to tell at the end of the day the reason for his termination . . . We come to the conclusion and find, in agreement with the trial judge, that the termination of the Respondent’s contract of service in the circumstances was unfair, the payment in lieu of notice notwithstanding . . .”

99. Clause 13.1 of the Employment Contract between the Claimant and the Respondent provided that;

“This Contract of Employment may be terminated by either party before its expiration by notice in writing. The period of notice is 3 months or 3 months’ salary in lieu of notice (except in cases of Gross Misconduct as per Clause 12.3)”.

100. This is the Clause the Respondent invoked.

101. Noteworthy, although the Respondent complied with the terms of the contract of service by paying the Claimant 3 months salary in lieu of notice, it is essential to ascertain whether the termination was fair as by law required.

102. On re-examination, the Claimant testified that the Respondent did not comply with the procedural requirements as prescribed by the law and the Respondent’s manual and no reason was provided.

103. Although the Claimant testified that the Respondent was using the Draft Manual, she furnished no evidence of the usage having confirmed on cross-examination that it had not been approved and was a working draft and was signed on 1st January, 2017.

104. As regards the reason for termination, the Respondent’s letter of termination as adverted to elsewhere in this judgment had no reason for termination and a review of the circumstances preceding the termination are unclear as to the reason for termination.

105. The Claimant blames the Respondent’s Regional Director, Mr. Clemens Von Heimendahl for her termination from employment which she characterises as having been actuated by malice, bad faith and vendetta.

106. In her written statement, the Claimant stated that before the termination, she was away on maternity leave.

107. Documentary evidence on record reveals that the Claimant applied for her maternity leave on 20th November, 2015 and it was approved by the supervisor, applied for annual leave 26 days on the same



day and a further 4 days and the supervisor, Mr. Clemens approved the applications unconditionally, a fact CWII, Mary Wanjiku Munene confirmed on cross-examination.

108. From the evidence on record, it is decipherable that the Claimant's employment was terminated while on annual leave approved earlier by the Regional Director, Mr. Clemens.
109. The Claimant tendered no evidence on what may have transpired after she proceeded on leave or before the Notice of termination was issued.
110. Significantly, RWI confirmed on cross-examination that there was no complaint against the Claimant and her performance was flawless.
111. From the evidence on record, it is unclear as to what actuated the termination of the Claimant's employment.
112. As regards procedure, it is clear that the Respondent did not comply with the provisions of the Employment Act, 2007 as there was neither a notice to show cause nor hearing.
113. Finally, in *Kenfreight (EA) Ltd V Benson K. Nguti (Supra)*, the Court of Appeal expressed itself as follows;

“It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for termination is valid and fair, that the reason related to the employee's conduct, capacity, compatibility or is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance with fair procedure. Section 43 specifically places the burden to prove that the termination was fair on the employer . . .”

114. For the above-stated reasons, it is the finding of the court that the termination of the Claimant's employment by the Respondent was unfair.
115. As to whether the Claimant waived her right to pursue further claims against the Respondent or is estopped from doing so, the Respondent's counsel addressed the issue as it arose during the hearing and the Claimant responded to the same on cross-examination and re-examination.
116. The principles that govern discharge vouchers and/or settlement agreements are well settled.
117. In *Thomas De La Rue (K) Ltd V David Opondo Omutelema (Supra)*, cited by the Respondent's counsel, the Court of Appeal stated as follows;

“We would agree with the trial court that a discharge voucher per se cannot absolve an employer from statutory obligation and that it cannot preclude the Industrial Court from enquiring into the fairness of a termination. That is however, as far as we are prepared to go. The court has, in each and every case, to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed, when the employee was seized of all the relevant information and knowledge.”

118. Similarly, in *Trinity Prime Investment Ltd V Lion of Kenya Insurance Co. Ltd (2015) eKLR*, the Court of Appeal stated;

“The execution of the discharge voucher, we agree with the learned judge constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant



accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”

119. In the instant case, it is common ground that the Claimant received Kshs.630,152/= via Cheque No. 001858 dated 5th April, 2016 on 6th April, 2016.

120. It is also not in dispute that the Claimant was actively involved in the computation of her dues and signed the clearance form dated 1st April, 2016.

121. The form stated inter alia;

“This is to certify that Susan Gaiti of ID No. 22753138 has left Diakonie Emergency Aid on this date and has handed over all property belonging to . . .

This letter also certifies that Diakonie Emergency Aid has cleared Susan Gaiti and that all monies and dues owed to her have been paid.

Hereby we certify that both parties have no further claims against each other.

Signed

Finance & Admin Manager Employee

122. In her evidence, the Claimant admitted that she signed the clearance form, told the court that she had many financial obligations to meet and weighed her options and accepted the amount paid. She denied having waived her right to pursue further claims against the Respondent. On re-examination, the Claimant testified that the employer did not tell her that she could not sue it.

123. Evidently, the Clearance Form in question was a settlement agreement and from the evidence on record, it was signed willingly and freely and the Claimant did not question its veracity or allege that its contents were misrepresented or was coerced or unduly influenced to sign it.

124. It is discernible that parties had agreed that payment of the monies and dues to the Claimant would absolve the parties from further claims against each other.

125. (See Coastal Bottlers Ltd V Kimathi Mithika (2018) eKLR).

126. The Claimant’s suit against the Respondent is also assailable under the equitable doctrine of promissory estoppel succinctly captured by Denning L.J in *Combe V Combe* (1951) 2 KB 215 as follows;

“ . . . where a party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. He must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by consideration but only by his word.”

127. The doctrine of promissory or equitable estoppel is usable by the party sued as a shield not as a sword. It is defensive not offensive. (See *Central London Property Trust Co. Ltd V High Trees House Ltd* (1947) KB 130).

128. On entitlement to the reliefs sought, the court proceeds as follows;



129. Having found that the Claimant had waived her right to pursue further or other claims against the Respondent and is thus estopped from doing so by reason of the promise she made to the Respondent which the Respondent acted on, the reliefs sought including declaration that termination of employment was unfair or that the Respondent violated the Claimant's rights and fundamental freedoms, as well as compensation, special damages and reinstatement are unsustainable and unavailable to the Claimant.
130. In the circumstances, the Claimant's suit against the Respondent is accordingly dismissed.
131. Parties shall bear own costs.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 23RD DAY OF APRIL 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

DRAFT

