



REPUBLIC OF KENYA



KENYA LAW
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**Muthee v LJA Associates LLP & another (Cause E743 of 2022)
[2024] KEELRC 13271 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13271 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E743 OF 2022
BOM MANANI, J
NOVEMBER 28, 2024**

BETWEEN

KAREN W MUTHEE CLAIMANT

AND

LJA ASSOCIATES LLP 1ST RESPONDENT

JAMES GITAU SINGH 2ND RESPONDENT

JUDGMENT

Introduction

1. This case challenges the Respondents' decision of 17th December 2020 which terminated the Claimant's contract of service. The Claimant contends that the decision was unfair. As such, she prays for the various reliefs set out in the Statement of Claim.
2. On the other hand, the Respondents dispute the claim. They both contend that the decision was lawful since it was triggered by the financial challenges which the 1st Respondent was experiencing. They contend that this development forced the 1st Respondent to go into restructuring, a decision which resulted in the abolition of the position which the Claimant had been occupying.
3. At the same time, the 2nd Respondent denies that he was the Claimant's employer. He contends that at the time of the cause of action, he was only a partner in the 1st Respondent Law Firm. As such, the Claimant has no cause of action against him.

Claimant's case

4. The Claimant avers that she was employed by the 1st Respondent in September 2018. She contends that the parties signed a contract dated 3rd September 2018 to anchor the relation.



5. The Claimant states that she was engaged to offer the 1st Respondent the services of a law associate. According to the contract which the parties signed, the Claimant's monthly salary was agreed at Ksh. 200,000.00.
6. The Claimant contends that she commenced work on 8th October 2018 on probationary terms. Subsequently, her contract was confirmed on 8th January 2019.
7. The Claimant contends that she executed her mandate under the contract with honesty, diligence and utmost commitment. She further contends that she expected that the 1st Respondent, being a respectable Law Firm, was going to uphold the terms of the contract between them and the law in its dealings with her.
8. The Claimant contends that on 19th March 2020, the 1st Respondent's management asked its employees to work from home. She contends that this request was in response to a government directive which required employers to permit their employees to work remotely in order to contain the spread of the Covid 19 virus which had hit the globe.
9. The Claimant avers that the 1st Respondent's management informed the employees that the period which they were to work from home would be deemed as part of their annual leave. As such, it was going to be discounted from their annual leave entitlements.
10. Despite the aforesaid notification, the Claimant contends that she continued to report to the office due to exigencies of work at the time. She contends that she had an ongoing arbitration which required that she reports to the office. As such, she worked remotely for only one week between 30th March 2020 and 3rd April 2020.
11. The Claimant avers that in early December 2020, she asked the 1st Respondent's management to confirm her accrued leave days. In response, the latter informed her that she had -2.2 days.
12. The Claimant avers that she contested the accuracy of the information on her leave days. As a result, the 1st Respondent's management reviewed the number of the accrued leave days to 5.8.
13. The Claimant avers that the 1st Respondent's managing partner subsequently and without justification rejected the aforesaid adjustment. As a result, her leave entitlement for the period was allegedly revised back to -2.2 days.
14. The Claimant contends that she fell ill around 14th December 2020 forcing her doctor to put her on bed rest for five (5) days. She contends that she wrote to the 1st Respondent notifying it of this development.
15. The Claimant avers that whilst she was on bed rest, the 1st Respondent's Human Resource Manager summoned her to a meeting at the 1st Respondent's office scheduled for 18th December 2020. She contends that when she got into the meeting, the said manager informed her that her contract of service had been terminated.
16. The Claimant avers that on the afternoon of the same day, the 1st Respondent's Human Resource Manager sent her an email forwarding the 1st Respondent's letter of 17th December 2020 terminating her contract. She contends that the letter informed her that her services had been terminated due to a restructuring process at the Law Firm which had resulted in the loss of her position. She further avers that the letter indicated that the restructuring process had been necessitated by financial challenges which the Law Firm was experiencing at the time.
17. The Claimant does not agree with the reasons for terminating her contract as set out in the aforesaid letter. She contends that the decision to terminate her contract was without valid basis.



18. According to her, the Law Firm admitted three persons into partnership immediately after it terminated her contract. As such, she believes that it (the Law Firm) was financially sound.
19. The Claimant further contends that the decision to terminate her contract was made without prior notice to her. She also contends that the 1st Respondent did not accord her a hearing before the decision was made. As such, it is her case that the process contravened the law.
20. The Claimant contends that after 1st Respondent communicated the decision to terminate her services on 18th December 2020, its management scheduled a meeting with her on 21st December 2020 to discuss the reasons for the decision. In her view, this meeting coming after the decision to terminate her contract had been made, did not satisfy the requirements of the law regarding an employer's obligation to hear an employee before terminating his/her contract of service.
21. The Claimant believes that the decision to terminate her services was premeditated. As such, she considers the reasons given to justify the decision as mere window dressing.
22. According to her, the process towards her release from employment begun in September 2020 when the 1st Respondent introduced performance evaluation for its employees. She avers that immediately the program was introduced, the 1st Respondent's management summoned her for performance review on 9th September 2020. She contends that during the exercise, the 2nd Respondent, a partner in the 1st Respondent Firm and her direct supervisor, embarked on a fault finding mission and subjected her to harassment, victimization and intimidation without just cause.
23. The Claimant contends that shortly after the foresaid process, she came across an internal memo from the 1st Respondent's Human Resource Manager to the 2nd Respondent which spoke to a scheme to frustrate her (the Claimant) into resigning from the Law Firm. As such, she believes that the treatment which the 2nd Respondent subjected her to during the performance review exercise was part of a wider scheme to unfairly edge her out of the Law Firm.
24. The Claimant further contends that the 1st Respondent wrote to its members of staff shortly after her contract was terminated to inform them that she had resigned from employment. Yet, it (the 1st Respondent) had terminated the contract. She contends that this communication fortifies her belief that the 1st Respondent's management had hatched a malicious scheme to unfairly eject her from the Law Firm.
25. The Claimant avers that the treatment which the Respondents subjected her to caused her stress, pain and agony. She contends that the actions by the Respondents violated her right to fair labour practice. As such, she prays for the various reliefs which she has set out in the Statement of Claim.

Respondents' case

26. On their part the Respondents contend that the Claimant was employed by the 1st Respondent in October 2018. According to them, the Claimant approached the 1st Respondent in September 2018 seeking employment to the position of associate. They contend that she was offered the position initially on probationary terms before the contract was confirmed in January 2019.
27. The 2nd Respondent contends that the Claimant was an employee of the 1st Respondent. As such, he denies that she has a cause of action against him.
28. The Respondents contend that the 1st Respondent undertook performance review for all its employees in September 2020. They contend that the 1st Respondent designed a time-sheet to aid in collection of data for the review process. They further contend that the Claimant presented her time-sheets which



- contained information on the files that she had been working on and that it is this information which was used to evaluate her.
29. The Respondents contend that the Claimant's performance was evaluated professionally and that she was advised on the areas which required improvement. They insist that the process was interactive with the employees, including the Claimant, being given an opportunity to give their feedback. They deny that the 2nd Respondent harassed or intimidated the Claimant as she claimed.
 30. The Respondents acknowledge the memo which the Claimant alleges exposed a scheme to force her out of the Law Firm. However, they contend that it (the memo) was an informal document which was not meant for public consumption. They further deny that it was for the purpose which the Claimant has alluded to.
 31. The Respondents contend that the 1st Respondent's management has a record of the Claimant's leave entitlements which shows that she had -2.2 leave days as at November 2020. As such, they dispute her assertion that she is entitled to claim 5.8 leave days.
 32. The Respondents contend that the 1st Respondent's management continued to report to the office on a day to day basis during the Covid 19 pandemic period in order to co-ordinate the Law Firm's activities. As such, they would have known if the Claimant reported to work during this period. They deny that she was at the office during this period.
 33. The Respondents contend that towards the end of November 2020 and at the beginning of December 2020, the 1st Respondent took a decision to restructure in response to the financial strain it was experiencing. As a result, some positions, including that which was held by the Claimant, were done away with.
 34. The Respondents aver that the Claimant was invited to a meeting to discuss the restructuring and the possible loss of her position. However, she did not turn up as she was said to have been unwell and on bed rest.
 35. The Respondents contend that the 1st Respondent's Human Resource Manager eventually held a meeting with the Claimant on 18th December 2020 during which she was informed about the decision to do away with her position due to the restructuring that had been done. They contend that the Claimant appreciated the crisis and accepted that her position in the Law Firm had been lost.
 36. The Respondents contend that after the deliberations of 18th December 2020, the Claimant was issued with the 1st Respondent's letter dated 17th December 2020 terminating her contract. They contend that the letter contained the reasons why the decision was taken.
 37. The Respondents contend that the 1st Respondent's management held a subsequent meeting with the Claimant on 21st December 2020 during which the reasons for terminating her contract were reiterated. They contend that the Claimant once again expressed her appreciation of the 1st Respondent's financial constraints which had informed the decision to terminate her employment.
 38. The Respondents contend that the Claimant cleared with the 1st Respondent and was paid her terminal dues. As such, the employment relation between them was lawfully closed.

Issues for Determination

39. After evaluating the pleadings and evidence on record, I am of the view that the following are the issues that fall for determination:-
 - a. Whether the Claimant was an employee of both Respondents.



- b. Whether the Claimant's contract of service was legitimately terminated.
- c. Whether the Claimant is entitled to the reliefs that she seeks.

Analysis

- 40. The parties testified in the cause and produced documentary evidence. Exhibit one (1) in the Claimant's list of exhibits is the contract of employment dated 3rd September 2018. The instrument is on a Letterhead which bears the name of the 1st Respondent.
- 41. Although the contract was signed by the 2nd Respondent, there is no indication that he intended it to establish an employment relation between him and the Claimant. He signed it on behalf of and in his capacity as a partner in the 1st Respondent Firm.
- 42. As such, I find that there was no employment relation that was created between the Claimant and the 2nd Respondent. The employment relation that sprung from the aforesaid instrument was between the Claimant and the 1st Respondent.
- 43. The parties agree that although the Claimant joined the 1st Respondent whilst it was an ordinary partnership, the 1st Respondent was subsequently registered as a limited liability partnership. At the time that the Claimant's employment was terminated, this change had already taken effect. As such, she was an employee of a limited liability partnership.
- 44. The legal status of limited liability partnerships is as expounded in the submissions by the Respondents. These entities have a life of their own which is distinct from that of the individuals who constitute their membership. As such, partners in the agencies do not shoulder general liability on their (the agencies') behalf (see the Limited Liability *Partnerships Act*, Cap 30 Laws of Kenya and *Wamuyu v Humprey & Company LLP & 2 others (Cause 490 of 2017) [2022] KEELRC 13487 (KLR) (24 November 2022) (Ruling)*). Consequently, I come to the conclusion that it was unnecessary for the Claimant to have joined the 2nd Respondent as a party to this action.
- 45. According to the Respondents, the reason why the 1st Respondent terminated the Claimant's contract was that it was experiencing financial challenges. As such, it was allegedly forced to restructure resulting in the loss of the Claimant's position.
- 46. The Respondents contend that the realization that the 1st Respondent was undergoing financial strain came to the fore towards the close of November 2020 and the beginning of December 2020. However, they do not give the precise date when they came to this conclusion. As a matter of fact, the 2nd Respondent, through his witness statement, indicates that the decision to restructure the 1st Respondent was made in early December 2020.
- 47. On her part, the Claimant denies that the 1st Respondent was undergoing financial challenges to warrant its restructuring. She relies on the fact that the 1st Respondent was able to admit three partners after she was dismissed from employment to contend that it (the 1st Respondent) was financially sound.
- 48. The Claimant contends that the decision to terminate her contract was motivated by other factors. She believes that she was pushed out of employment in order to provide a window for one of the associates who was junior to her to be promoted to the position of partner.
- 49. The law entitles an employer to restructure his business in order to run optimally. It is acknowledged that this process may lead to job losses. However, release of employees affected in the process must be



undertaken in a fair and just manner. It is for this reason that the law strictly regulates the process of declaration of redundancies at the work place.

50. In Kenya, the law on redundancy is set out in sections 40 and 45 of the *Employment Act* as read with article 41 of *the Constitution*. Section 45(2) (b) (ii) of the *Employment Act* recognizes that an employer may terminate the services of an employee on account of his (the employer's) operational requirements. On the other hand section 40 of the Act sets out the procedure which an employer must follow when terminating an employee's contract for operational reasons.
51. Article 41 of *the Constitution* protects the right to fair labour practices. An employer who does not comply with the provisions of the *Employment Act* whilst terminating an employee's contract of service for operational reasons infringes on the employee's right to fair labour practice.
52. Section 40 of the *Employment Act* requires an employer who intends to terminate a contract of service for operational reasons to: issue the affected employee or his trade union a notice of not less than one month informing him of the intention to declare a redundancy. The notice should set out the reasons and extent of the proposed redundancy.
53. There is no evidence that the 1st Respondent complied with this requirement. There is no evidence that it (the 1st Respondent) issued the Claimant with a notice of one month informing her that it proposed to close the employment relation between them due to the financial challenges it was facing. All that the 1st Respondent has produced in evidence was its letter to the Claimant dated 17th December 2020 informing her that her services will terminate on 31st December 2020, less than fifteen (15) days from the date of the letter. Such cannot be said to have met the requirements for a redundancy notice under 40 of the *Employment Act*.
54. Even if the court was to assume that the letter of 17th December 2020 was to serve the purpose of a redundancy notice under the law, it is apparent that it would still have been deficient. The letter did not speak to the extent of the proposed job loss as a result of the 1st Respondent's proposed action.
55. Importantly, the letter of 17th December 2020 communicated the 1st Respondent's decision to terminate the Claimant's contract. As such, if it counted for anything under section 40 of the *Employment Act*, it can only have been considered as a termination notice under section 40 (1) (f) thereof. It could not have served as the redundancy notice required to be issued to the employee under section 40 (1) (a) and (b) of the Act.
56. Further, section 40 (1) (a) and (b) of the *Employment Act* obligates the employer to notify the local labour office regarding any restructuring exercise that is likely to result in job losses. There is no evidence that the 1st Respondent complied with this requirement.
57. The record shows that the Claimant was not the only associate in the 1st Respondent's Law Firm. As a matter of fact, the 1st Respondent's second and third witnesses confirmed that at the time the Claimant's employment was terminated, the 1st Respondent had more than ten (10) associates working for it.
58. Despite this number of associates, there is no evidence to demonstrate the procedure which the 1st Respondent adopted to select the Claimant as the employee who had to exit employment. This was in contravention of section 40 (1) (c) of the *Employment Act* which obligates the employer to adopt a transparent selection procedure for the employees to exit the enterprise having regard for their seniority, skill and reliability (*Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR).



59. The Respondents contend that the 1st Respondent got rid of the position of senior associate which was at the time held by the Claimant. They contend that the Law Firm had only one position of senior associate at the time. However, there was no evidence to demonstrate that the Claimant had been promoted from the position of associate to that of senior associate.
60. During cross examination of the Respondents' 2nd and 3rd witnesses, they asserted that the fact that the Claimant was earning Ksh. 200,000.00 on exit was proof of the fact that she held the position of senior associate. According to them, the Claimant's salary was higher than that which the 1st Respondent was paying its junior associates.
61. This argument is misleading. The contract of service between the Claimant and the 1st Respondent shows that her entry salary as an associate was Ksh. 200,000.00. On exit, she was still earning this amount.
62. The foregoing fortifies the Claimant's position that at the time of her exit from the 1st Respondent's employment, she was still serving in the position of associate and not senior associate as asserted by the defense. As such, the court finds that at the time the Claimant's contract was terminated, she was serving as an associate and not senior associate.
63. From the record, at the time the Claimant's contract was terminated, the 1st Respondent's establishment had more than ten (10) people serving in the position of associate. As such, if any one of them was to lose employment on account of restructuring, the 1st Respondent was under obligation to undertake selection of the employee to be released in accordance with the selection procedure prescribed under section 40 of the [Employment Act](#). There is no evidence that this was done.
64. The Respondents contend that the Claimant was released from employment because of the financial constraints which the 1st Respondent was experiencing. They aver that these challenges forced the 1st Respondent to restructure resulting in the Claimant's position being done away with. However, they did not provide cogent evidence to back these assertions. They did not place before the court the 1st Respondent's financial records to demonstrate that it indeed was undergoing financial challenges which had forced it to downsize.
65. Under section 43 of the [Employment Act](#), the employer bears the burden of proving the reasons for terminating a contract of service. It is not sufficient for him to merely make assertions regarding the reasons for his decision. He must provide evidence to establish them (the reasons) or to support his contention that he had a genuine belief that there was a credible basis to terminate the contract. If he fails to do so, the termination will, by dint of section 45 of the Act, be deemed as unfair (*Kenya Union of Domestic, Hotels, Educational Institutions & Hospitals Workers v Mombasa Sports Club* [2014] eKLR).
66. The Respondents' witnesses assert in their evidence that what they allege to have happened at the Law Firm was not a redundancy. Yet, they insist that the Firm underwent restructuring in response to financial challenges and that this process resulted in the loss of some positions.
67. Contrary to the Respondents' contention that their case was not about a purported redundancy, the evidence they presented to court paints a picture of a purported redundancy. As such, the 1st Respondent was under obligation to demonstrate that it complied with the requirements of section 40 of the [Employment Act](#) on redundancy. Yet and as is apparent from the record, this was not done.
68. Both parties have alluded to the Claimant's performance either directly or indirectly. As a matter of fact the Claimant's performance was given undue prominence during the trial.



69. However, the court does not think that much turns on this aspect of the case. This is because the decision to terminate the Claimant's contract was not informed by her performance. According to the 1st Respondent's letter dated 17th December 2020, the contract between them was terminated for operational reasons arising from the financial constraints it was undergoing.
70. As section 2 of the *Employment Act* suggests, termination of a contract of service on account operational requirements of the employer is essentially without fault on the part of the employee. As such, evidence relating to the employee's poor performance, misconduct or incapacity adds no value to resolving a challenge directed at the propriety of the decision to terminate the contract.
71. The evidence on record demonstrates that the 1st Respondent was keen to terminate the Claimant's employment. This fact is self-evident from the note which Jane Kingara sent to the 2nd Respondent, a copy of which the Claimant chanced upon in November 2020. The note clearly speaks to a proposal to promote one Rayal to the position of senior associate as a strategy of exerting pressure on the Claimant to look for new opportunities.
72. The Respondents did not deny that the note emanated from one of the 1st Respondent's officers and was directed to the 2nd Respondent. When cross examined on the matter, the defense witness stated that the proposed action was meant to put pressure on the Claimant so that she looks for other opportunities internally. However, a literal interpretation of the note does not support this contention. Clearly, the instrument was speaking to a proposal to push the Claimant out of employment for reasons that are not apparent on the face of it.
73. The letter terminating the Claimant's contract and the events that followed shortly thereafter further suggest a scheme to edge the Claimant out of employment. The letter was crafted on 17th December 2020 before the 1st Respondent notified the Claimant of the intention to terminate her contract. Subsequently, the 1st Respondent sought to camouflage the termination as a resignation by the Claimant as opposed to termination by it (the 1st Respondent). In the court's view, these maneuvers speak to the 1st Respondent's resolve to edge out the Claimant whilst shirking responsibility for its actions.
74. The court observes that the 1st Respondent did not release the Claimant from employment in accordance with the law on redundancy. Yet, it relies on its operational requirements to justify the decision to terminate her contract. As such, the termination was unlawful.
75. But even assuming that this was not a case of redundancy, the 1st Respondent's actions would still have failed to meet the validity test. In all cases of unilateral termination of a contract of employment by the employer where the employer invokes a ground for termination that is founded on the *Employment Act*, he is obligated to comply with the strictures in sections 41, 43 and 45 of the Act. Thus, assuming that the 1st Respondent's case is that the Claimant's contract was terminated because of poor performance, the law still required it (the 1st Respondent) to notify her of this accusation and allow her an opportunity to be heard in response to the charge before her contract could be terminated.
76. There is no evidence that the 1st Respondent complied with the above requirements of statute. There is no evidence that the Claimant was summoned for a hearing before the decision to terminate her contract was made as contemplated under section 41 of the *Employment Act*.
77. It is noteworthy that the first meeting to which the Claimant was invited to discuss termination of her contract was held on 18th December 2020. Yet and as the record demonstrates, on this date, the decision to terminate the contract had already been made and a letter dated 17th December 2020 communicating



the decision drafted. The next meeting to discuss the termination happened on 21st December 2020 several days after the Claimant's contract had been terminated.

78. In effect, the two sessions were not the kind of session that is contemplated under section 41 of the [Employment Act](#). As indicated earlier in this decision, the session contemplated under this section ought to happen before the decision to terminate the contract is made.
79. In their testimony, the Respondents' witnesses assert that the Claimant was invited for a meeting before the decision to terminate her contract was made but she failed to honour the invite because she was unwell and on bed rest. However, they did not provide cogent evidence of the alleged invite. They did not even disclose the date when the alleged meeting was to have taken place.
80. From the evidence on record, it is apparent that the 1st Respondent did not comply with the law in processing the release of the Claimant from employment. As such, the court arrives at the conclusion that the 1st Respondent's decision to terminate the Claimant's contract was irregular for want of substantive justification and procedural fairness.
81. The 1st Respondent contends that because it invoked the termination clause in the employment contract and paid the Claimant in lieu of notice in terms of sections 35 and 36 of the [Employment Act](#), it lawfully discharged the contract between them. I do not agree.
82. The doctrine of employment at will has limited application in Kenya's legal architecture. The [Employment Act](#) requires employers to terminate contracts of employment with cause (see par. 86 of *G M V v Bank of Africa Kenya Limited* [2013] eKLR).
83. It is noteworthy that in the 1st Respondent's letter communicating its decision to terminate the Claimant's contract, it indicated that after reviewing its current operations and financial situation, it had come to the conclusion that it had to do away with a number of positions within its establishment including that occupied by the Claimant. In effect, the 1st Respondent was invoking 45 (2) (b) (ii) of the [Employment Act](#) to justify its decision.
84. Section 45 of the Act prohibits an employer from terminating an employee's contract of service unfairly. It goes further to define what amounts to unfair termination of a contract of service. A contract of service is deemed as unfairly terminated if the employer fails to demonstrate that:-
 - a. the reason for the termination is valid;
 - b. the reason for the termination is a fair reason either related to the employee's conduct, capacity or compatibility or the operational requirements of the employer; and
 - c. the employment was terminated in accordance with fair procedure.
85. In the Court of Appeal decision of *Kenfreight (E.A.) Limited v Benson K.Nguti* [2016] eKLR, the court expressed itself on the matter as follows:-

“Apart from issuing proper notice according to the contract (or payment in lieu of notice as provided), an employer is duty-bound to explain to an employee in the presence of another employee or a union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service is taken.”
86. In effect, mere compliance with the requirement with respect to notice to terminate the contract is not sufficient to validly terminate a contract of service. Apart from the notice, the employer must justify



the validity of the reason proffered as the justification for terminating the contract. This is particularly so when the employer has invoked one of the reasons under the [Employment Act](#) as the basis for his decision. As such, the moment the 1st Respondent invoked its operational requirements (which is founded on section 45 of the Act) as the basis for its decision, it was bound to prove the validity of this reason.

87. The next question for consideration relates to the reliefs which the Claimant seeks. The record shows that the Claimant has prayed for commutation of 5.8 leave days. The Claimant relies on data supplied by the 1st Respondent to push for this relief.
88. She contends that on 7th December 2020, she wrote to the 1st Respondent's Human Resource Manager inquiring about her leave days. In turn, the Human Resource Manager wrote to her indicating that she had -2.2 leave days.
89. The Claimant avers that she contested this assertion prompting the said officer to review her decision. As a result, she was informed that she had 5.8 leave days at the time. However, this was later reversed after a Managing Partner in the Law Firm gave instructions to that effect.
90. The Claimant contends that the Managing Partner's instructions had no justification. As such, her (the Managing Partner's) decision should be overturned in order for her (the Claimant) to get leave commutation for 5.8 days.
91. The 1st Respondent has contested the claim. It contends that during the Covid pandemic, it allowed its employees to work from home with the understanding that this period was going to be factored into their leave days. It contends that the Claimant benefited from this arrangement. As such, she is not entitled to the leave days she has claimed.
92. Although the Claimant avers that she continued to work from the office and is therefore entitled to the leave days claimed, the 1st Respondent's management deny that she was at the office. In addition, they have provided records to demonstrate that the Claimant's leave days for 2020 stood at -2.2.
93. In the face of this evidence, the court is not satisfied that the Claimant has sufficiently proved her claim for leave days. It is true that the 1st Respondent's management may have initially informed her that her leave days were 5.8. However, it is noteworthy that this communication was recalled and the Claimant informed that her actual leave days were -2.2.
94. The 1st Respondent's Human Resource Manager stated in evidence that in reviewing the Claimant's leave days to 5.8, she relied on the Claimant's word. However, the Managing Partner used the employees' leave tracker to adjust the days back to -2.2.
95. Apart from the records that were generated by the 1st Respondent's Human Resource Manager showing that the Claimant's leave days were 5.8, the Claimant had no other evidence on this aspect of the case. Given that the said Human Resource Manager testified that the computation was arrived at without looking at the leave tracker, it is apparent that it (the computation) may not have been accurate. As such, I am not satisfied that there is sufficient material before the court to anchor an award of leave commutation for 5.8 days. Consequently, the claim for leave commutation is declined.
96. I have found that the decision to terminate the Claimant's employment was unlawful. As such, she is entitled to compensation for the wrongful termination of her contract.
97. In determining the amount to award under this head, I am guided by section 49 of the [Employment Act](#). Having regard to the totality of the evidence before me, I am convinced that the Claimant's actions did not contribute to the decision to terminate her contract. On the other hand, there is sufficient



evidence to demonstrate that the 1st Respondent, acting through the 2nd Respondent and other officers, terminated the Claimant's employment unfairly.

98. It is apparent that the 1st Respondent's officers handled the process of closure of the Claimant's contract in a manner that was quite insensitive to her. The evidence on record suggests that the decision to terminate the contract was predetermined.
99. The Respondents' officers begun strategizing on how to push the Claimant into seeking other opportunities long before she was shown the door. They even prepared the letter terminating her contract before she was notified of the intention to separate. The letter was eventually shared with her through email without a word from her supervisor notwithstanding that she had been at the office to attend a physical meeting on the day it was emailed.
100. At the time the 1st Respondent's Human Resource Manager sent the Claimant the letter, its (the 1st Respondent's) management was aware that she was unwell and away on bed rest. This fact was confirmed by the Respondents' second witness who indicated that the Claimant had sent him an email to this effect on 14th December 2020.
101. During her cross examination, the 1st Respondent's Human Resource Manager conceded that the Claimant's release from employment was not handled correctly. I understand her to have been implying that the process could have been handled in a much better way. Undoubtedly, the events culminating into the Claimant's release from employment subjected her to considerable anguish.
102. Taking these factors into account, I arrive at the conclusion that the Claimant deserves considerable compensation. As such, I award her compensation for the unfair termination of her contract which is equivalent to her gross monthly salary for twelve (12) months.
103. The contract of employment shows that the Claimant's monthly salary was Ksh. 200,000.00. This was corroborated by the defense witnesses during the trial.
104. As such, the Claimant is awarded $Ksh. 200,000.00 \times 12 = Ksh. 2,400,000.00$, less the applicable statutory deductions. This amount attracts interest at court rates from the date of this decision.
105. The Claimant prayed for general damages for violation of her constitutional right to fair labour practises. However and having regard to the reliefs that have been ordered earlier, I am minded not to award this prayer in order to avoid the possibility of double compensation. As such, I decline the request.
106. The Claimant is awarded costs of the case.
107. The Claimant's suit against the 2nd Respondent in his individual capacity is dismissed.
108. Any other relief that was sought by the Claimant which has not been expressly granted is deemed to have been declined.
109. The orders and reliefs granted to the Claimant operate and are enforceable against the 1st Respondent.
110. Having regard to the 2nd Respondent's overall involvement in the process which resulted in the unfair termination of the Claimant's services, I decline to award him costs.

Summary of Awardcase

111. The court makes the following findings and orders:-



- a. There was no employment relation between the Claimant and the 2nd Respondent. As such, it was not necessary for the Claimant to have sued the 2nd Respondent in this action.
- b. There was an employment relation between the Claimant and the 1st Respondent.
- c. The contract of service between the Claimant and the 1st Respondent was terminated without valid cause and in disregard of fair procedure.
- d. The court declines to award the Claimant leave commutation for 5.8 days as prayed.
- e. The Claimant is awarded compensation for unfair termination of her contract which is equivalent to her gross salary for twelve (12) months, that is to say Ksh. 2,400,000.00.
- f. The aforesaid amount is subject to the applicable statutory deductions.
- g. The Court awards the Claimant interest on the aforesaid sum at court rates from the date of this decision.
- h. The Court declines to grant the Claimant general damages for violation of her right to fair labour practice.
- i. The Court awards the Claimant costs of the case.
- j. The Court dismisses the Claimant's case against the 2nd Respondent with no order as to costs.
- k. As such, the reliefs which have been granted in favour of the Claimant are enforceable against the 1st Respondent.
- l. Any other relief which was sought by the Claimant but which has not been expressly granted is deemed to have been declined.

DATED, SIGNED AND DELIVERED ON THE 28TH DAY OF NOVEMBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

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