



**Mutunga v Post Bank Regulated NON-WDT Sacco Society Ltd (Cause E796 of 2022) [2024] KEELRC 13179 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13179 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E796 OF 2022  
JK GAKERI, J  
NOVEMBER 21, 2024**

**BETWEEN**

**JOSEPHINE MBULA MUTUNGA ..... CLAIMANT**

**AND**

**POST BANK REGULATED NON-WDT SACCO SOCIETY LTD . RESPONDENT**

**JUDGMENT**

1. The Claimant initiated this suit by a statement of claim dated 3<sup>rd</sup> November, 2022 alleging that the Respondent terminated her employment unlawfully and unfairly.
2. The Claimant's case is simply that she was employed by the Respondent on 3<sup>rd</sup> May, 1993 at Kshs.199,084.00 per month and served until she was suspended on 31<sup>st</sup> January, 2022 and employment terminated without a warning letter, notice to show cause or pay in lieu of notice, notwithstanding the diligent service rendered.
3. It is the Claimant's case that attempts to resolve the matter out of Court have not yielded fruits.

The Claimant prays for:

- i. A declaration that her dismissal from employment by the Respondent was unlawful, unfair and null and void.
- ii. Pay in lieu of notice Kshs.199,084.00
- iii. Service pay for 28 years Kshs.2,787,176.00
- iv. Damages for unfair dismissal Kshs.2,389,008.00
- v. Leave Kshs.298,626.00
- vi. Salary till retirement Kshs.8,162,444.00



Total Kshs13,836,338.00

- vii. Interest at Court rates from date of filing.
- viii. General exemplary damages.
- ix. Costs of this suit
- x. Such other or further relief as this Honourable Court may deem just to grant

### **Respondent's Case**

- 4. The Respondent admits that the Claimant was its employee for 28 years as alleged and at the material time, its Chief Executive Officer.
- 5. It is the Respondent's case that the Claimant breached her obligations under the contract of service.
- 6. That the Respondent accorded the Claimant 48 hours to respond to the Notice to Show Cause, responded denying the charges and was suspended effective 21<sup>st</sup> January, 2022 pending investigations but declined to accept the suspension letter.
- 7. It is the Respondent's case that by letter dated 2<sup>nd</sup> February, 2022 it notified the Claimant that the Special Central Management Board Committee had ratified the suspension and the Claimant handed over to an acting Chief Executive Officer.
- 8. That the Respondent commissioned a forensic audit which found the Claimant's performance wanting and disciplinary action was recommended and after a disciplinary hearing, the Claimant's employment was terminated vide letter dated 4<sup>th</sup> July, 2022.
- 9. That the Claimant appealed vide letter dated 26<sup>th</sup> July, 2022 was invited for an appeal hearing scheduled for 13<sup>th</sup> August, 2022 but did not attend.
- 10. It is the Respondent's case that it had sufficient grounds to terminate the Claimant's employment and prays for dismissal of the Claimant's suit with costs.
- 11. The Claimant's response to the Reply to the memorandum of Responses dated 18/10/2023 raised no new issue.

### **Claimant's Evidence**

- 12. On cross-examination, the Claimant confirmed that the suspension was ratified by the Respondent's board of directors after she wrote to the board.
- 13. CWI further admitted that she was issued with a notice to show cause, understood the issues and responded.
- 14. It was her testimony that the suspension was to facilitate further investigation.
- 15. The Claimant confirmed that she attended a disciplinary hearing, received a summary dismissal letter and appealed but did not appear for the hearing.
- 16. The witness further admitted that she adhered to the policies of the Respondent and the resolutions of the board and it was her duty to keep the board abreast on all matters.
- 17. CWI denied that there was insider lending in the society or having failed in her duties in the 28 years of service to the Respondent.



28. It was her testimony that she was a manager until SASRA instituted Regulations and title changed in 2021.
29. On re-examination, the Claimant testified that she was not given a copy of the minutes nor sign a copy and received gratuity.
30. That she could not interfere with the system on insider loans and it was the basis of termination of her employment.

### **Respondents Evidence**

31. RWI, Monica Ndung'u, confirmed, on cross-examination that non-performing loans were noted and the Claimant was given the report and had evidence to prove that the Claimant declined to avail data as she claimed that the information was not supposed to be given to any person or the chairman.
32. That although the Respondent knew that fraud was a criminal offence it opted not to report the matter to the police to protect the dignity of former employees.
33. That the audit found that the Claimant breached the duty of care it owed to the Respondent and its members but was unsure whether the Audit Report was shared with the Claimant.
34. It was her testimony that after the Claimant's appeal was received a committee was instituted but the Claimant did not appear for the hearing.  
That terminal dues were paid as per the pay slips on record.
35. On re-examination, RWI testified that the Claimant's appeal was considered and the Audit Report revealed acts of negligence on the part of the Claimant.
36. That the Respondent reported the Claimant to SASRA in 2021 which directed that the loans be recovered and action taken against those involved.
37. That the employment of other senior officers of the Respondent was also terminated but the matter was not reported to the police.

### **Claimant's Submissions**

38. Counsel for the Claimant submitted that the termination of the Claimants employment was unfair as she was not given a copy of the minutes of the disciplinary hearing and did not sign them.
39. Counsel further submitted that Respondents witness could not demonstrate how the Claimant abused her office.
40. Reliance was made on the provisions of the *Employment Act* and sentiments of the Court in *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR, *Naima Khamis V Oxford University Press (EA) Ltd* [2017] eKLR and *Mbita Ntiro V Mbae Mwirichia & Another* [2018] eKLR to urge that the Claimant had proved her case against the Respondent.

### **Respondent's Submissions**

41. As to whether termination of the Claimant's employment was procedurally fair, counsel submitted that it was as the Respondent issued a notice to show cause and the Claimant responded, was invited for a hearing and was heard and the outcome communicated.



42. The decision in *Postal Corporation of Kenya V Andrew K. Tanui* [2019] eKLR was cited to reinforce the submission on substantive justification of termination of the Claimant's employment. Counsel submitted that the Respondent had sufficient reasons to do so as the Claimant neglected her work, ignored controls and procedures, failed to disclose lapses and engaged in unsound practices which exposed the Respondent to probable loss of Kshs.39,157,025.00
43. Reliance was made on the sentiments of the Court of Appeal in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 Others* [2019] eKLR to urge that the Respondent had proved its case on a balance of probabilities as it had reasonable and sufficient grounds to dismiss the Claimant.
44. Counsel urged the Court to rely on the finding of the Court of Appeal in *Stanbic Bank Ltd V Danson Mwashaka Mwakuwona* [2015] eKLR.
45. On the reliefs sought counsel submitted that none was available to the Claimant as she had failed to prove that the termination of employment was unfair.

### **Analysis and determination**

46. It is common ground that Claimant was an employee of the Respondent from May 1993 to 4<sup>th</sup> July, 2022 when she was summarily dismissed on various grounds and was at the time the Respondent's Chief Executive Officer (CEO).
47. It is equally not in contest that the Respondent Commissioned an audit investigation on fraud, insider lending and gross misconduct and a report dated 8<sup>th</sup> March, 2024 was prepared. The Respondent availed no evidence to show that a copy was availed to the Claimant.
48. Noteworthy, the notice to show cause was issued and responded to prior to the audit investigation. Consequent to the audit, the Claimant was invited to a disciplinary hearing, attended, and participated and the Committee recommended her dismissal from employment and the Claimant was according summarily dismissed, appealed the decision was invited to an appeal hearing but it was a no show.
49. Documentary evidence on record reveals that the Respondent and the Regulator, the Sacco Societies Regulatory Authority (SASRA) had been in communication for the better part of the 2<sup>nd</sup> half of 2021 when the Respondent sought Authorization Certificate and granted a conditional Authorization Certificate.
50. The regulator highlighted at least six (6) actionable areas including institutional infrastructure, risk management and internal controls, Credit Management Review, Management Information System (MIS), Organizational governance and Management review and capital adequacy review, and an action plan was required within 60 days. The CEO submitted one vide letter dated 5<sup>th</sup> July, 2021. Finally, towards the end of 2021, the respondent conducted a review of the loans provisions as at 30<sup>th</sup> September, 2021.
51. In sum, the Audit, SASRA and the report on loan provisions identified many challenges the respondent was grappling with and proposed ways to resolve them or reduce their negative effects on the respondent.
52. The issues for determination are;
  - i. Whether termination of the Claimant's employment by the Respondent was unfair.
  - ii. Whether the Claimant is entitled to the reliefs sought.



53. It is trite law that for a termination of employment to pass muster it must be demonstrated that the employer had a substantive justification to do so and terminated the employment relationship in accordance with a fair procedure as held in *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR.
54. A termination of employment may therefore be substantively or procedurally unfair or both. See *Naima Khamis V Oxford University Press (EA) Ltd* [2017] eKLR.

### **Reasons for termination**

56. The notice to show cause dated 21<sup>st</sup> December, 2021 accused the Claimant of multifarious acts and omissions relating to loans given by the respondent to 12 persons who belonged to the outside common bond (OCB) whose repayments were in arrears. All the loans were given between January and October 2021.
57. The Respondent alleged that borrowers who had challenges in repayment were refinanced, bought mature shares after receiving the loans, the loans were disbursed in cash at the Sacco counter as opposed to through an account, shares were paid for in cash at the counter, friends and relatives of staff, some with no formal sources of income obtained loans and staff received the amount lent in cash on their behalf, applications were not queued and no follow up had been made to recover the loans nor listed them as defaulters, some of the loans were not approved by the Credit Committee, some families had loans of over Kshs.3.2million advanced and some secured special loans.
58. The Claimant was accused of non-availment of reports or data, prevented the chair from accessing the respondent's database, approved loans to relatives and friends, failed to supervise and manage staff who approved loans or require them to follow up on defaulters, insubordination, failure to update the board on the failure by borrowers to repay, but were given more loans to repay old loans, failure to show up to address audit issues while on leave and failure to protect the respondent. The Claimant was also accused of negligence and failure to discharge her duties diligently as expected of a C.E.O.
59. The Claimant responded vide letter dated 23<sup>rd</sup> December, 2021. It was her response that the OCB members were sanctioned by the Sacco By-laws and guarantors were to be from the common bond and the loan provision of Kshs.20million had been reported to SASRA.
60. The Claimant admitted the allegations regarding loans to the 12 OCB members save for the allegation that they were not queued citing the respondent's policy, including disbursement of loans in cash. The Claimant, also admitted that the credit department was grappling with challenges of capacity, absence of competent officers and configuration of the system all noted by SASRA.
61. Puzzlingly, the Claimant admitted that some loans were disbursed without approval of the credit committee. The Claimant denied having violated any Sacco policy or code of conduct or failed to protect and defend the Respondent.
62. However, the Audit Report dated 8<sup>th</sup> March, 2022 highlighted interesting findings.
63. The total outstanding loan balances plus interest stood at Kshs.39,568,673.90, that staff number PF 8007 referred 4 family members and close friends and became a super guarantor. The family members took loans totalling Kshs.10,308,389.37 inclusive of interest and PF 8007 received all proceeds in cash.
64. Second, staff number PF 8004 referred 6 family members and friends, a total loan of Kshs.16,005,106.15 inclusive of interest and PF 8004 received all loan proceeds in cash on their behalf.



65. That member number PF 6187 applied for a loan on 15<sup>th</sup> September, 2021 and instructed in writing that the proceeds be paid to staff PF number 88001's account. These transactions contravened clause 6.2 of the Respondent's Credit Policy.
66. The audit found that loan disbursements were secured in favour of family members contrary to the Credit Policy.
67. It was also found that family members would apply for loans and use the proceeds to pay other loans within the family accounts, a common practice to enable other family members access more funds.
68. That member number PF 0270 made fraudulent loan application through proxies member Number 6389, 6175, 6418 and 6334 a total loan of Kshs.13,255,178.38 as of January 31<sup>st</sup> January 2022.
69. The audit also found an instance of conflict of interest by a director who approved a loan and part the proceeds came to him.
70. Similarly, staff PF numbers 8024, 8007 and 8001 had financial dealings with the Respondent which was not disclosed, contrary to the provisions of the Sacco Society Act.
71. It was found that staff took loans in violation of the  $\frac{1}{3}$  rule without board approval and capacity to pay was not considered, in violation of Section 19 of the *Employment Act*.
72. The Audit also found that loans were approved by a single member of the Credit Committee, forged loan application purposes, preferential transactions with insiders or related interests in violation of the 2<sup>nd</sup> Schedule to the Sacco Society Act.
73. Also noted was non-compliance with insider lending policy, disbursement of unapproved loans and no action taken against staff implicated in wrong doing or reported to the board of directors.
74. The audit found that the Claimant, as the Respondent's CEO failed to offer proper guidance consistent with the Sacco Society Act. The audit report recommended disciplinary action against the culprits
75. As adverted to elsewhere in this judgment, SASRA's letter dated 25<sup>th</sup> June, 2021 long before the Audit noted several actionable areas such as, at least (nine) 9 non-existent policies, out dated policies in need of review, including the Credit Policy, out dated management information system in need of review, unupdated files, vacant positions board committees not constituted as per the Sacco By-laws, information from minutes of board meetings and the respondent had not complied with the capital adequacy requirement.
76. Finally, by memo dated 7<sup>th</sup> December, 2021, the chair of the Supervisory Committee reported to the chair of the board the status of the loan's provision as at 30<sup>th</sup> September, 2021 of Kshs.20,261,908.95.
77. It was noted that:
  - i. The provision was too high and substandard loans accounted for Kshs.11,878,489.32.
  - ii. A loan advanced on 30<sup>th</sup> May, 2019 remained outstanding for 19 months and had been provided for fully akin to a bad debt as the employer disowned the letters indicating commitment to pay vide check off.
  - iii. The highest defaulters were OCB members and ex-staff hence poor loan.
  - iv. For OCB members, the management did not request for other sources of income in assessing the borrower's ability to service the loan.



- v. Unapproved loans or by one member of the committee.
  - vi. Non-compliance with loan guaranteeship for OCB members and lack of due diligence on new loans.
  - vii. Poor loan appraisal and irregular special loans to OCB members
78. The chair recommended various remedial steps including review of the Credit Policy as recommended by SASRA, due diligence in loan application appraisal, OCB members to be given only one major loan and any other on demonstration of ability to pay through Know Your Customer (KYC). Approval of all loans by at least 2 Board members of the Credit Committee, minimum guaranteeship to be enforced and proceeds of loans paid to the beneficiaries account, provision of security by borrowers and penalise violators of the Credit Policy.
79. The disciplinary Committee found the Claimant culpable for the irregularly given loans, as she was the general supervisor of staff, failed to offer proper guidance to the board and staff contrary to the provisions of the Sacco Society Act on; implementation and adherence to policies, efficient operations and communication, human resource management and adherence to the Respondent's code of conduct.
80. The committee further found that the Claimant acted negligently as she violated Regulations and By-laws of the Respondent, engaged or participated in unsafe and unsound practices, breached her fiduciary duty to the employer by failing to take appropriate steps which allowed other parties obtain unfair advantage or gain which prejudiced member's interests.
81. The letter of termination of employment dated 4<sup>th</sup> July, 2022 accused the Claimant of abuse of office by violating the *Sacco Societies Act* Regulations and Guidelines and the Sacco By-laws, failure to take appropriate action which resulted in the Respondent suffering financial loss, neglect to perform work which was her duty to perform carefully and properly which led to irregular loan disbursements, failed to report procedural lapses, policy gaps and suspected fraud, which amounted to gross misconduct.
82. In determining whether the Respondent had a valid and fair reason to summarily dismiss the Claimant from employment, the Court is guided by the provisions of Section 43(2) of the *Employment Act* and relevant judicial authorities.
83. In *Naima Khamis V Oxford University Press (EA) [2017] eKLR* the Court of Appeal expressed itself as follows:
- “...reasons for termination are matters that an employer at the time of termination of contract can genuinely support the evidence and which impact on the relationship of both the employer and employee in regard to the terms and conditions of work set out in contract. For example, poor performance, insubordination and lack of loyalty are some of the grounds...”
- See *Galgalo Jarso Jillo V Agricultural Finance Corporation [2021] eKLR*.
84. In *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 Others [2019] eKLR* the Court of Appeal observed that;
- “The standard of proof is on a balance of probabilities 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”.



85. See also the sentiments of Lord Denning in *British Leyland UK Ltd C Swift* [1981] IRLR 91 on the band of reasonable responses test.
86. In the instant case the Respondent relied on insubordination, abuse of office and failure by the Claimant to discharge her duties diligently. The litany of irregularities in the advancement of loans to members and in particular to OCB members, actionables highlighted by SASRA and in particular absence of information in minutes of board meetings, policy gaps, out-dated policies, absence of guidance of the board on the policies, human resource requirements and constitution of board committees among others in the Court's considered view implicated the Claimant's supervisory and management abilities and style.
87. As regards the loans and violation of the Respondent's Credit Policy for instance, which took place from late 2019 to late 2021, the Claimant, it would appear was aware and did nothing about it or had abdicated her supervisory and managerial responsibilities as the Respondent's Chief Executive Officer.
88. The Court is left wondering why some employees of the Respondent had the temerity to act so presumptuously yet they were answerable to the C.E.O.
89. Flowing from the foregoing, the Court is persuaded that the Respondent has placed sufficient material before it to make a finding that the Respondent had a reasonable basis to genuinely believe that it had valid and fair reasons to summarily dismiss the Claimant from employment.

### **Procedure**

90. As held in *Pius Machafu Isindu V Lavington Security Guards Ltd* [2017] eKLR Section 41 of the *Employment Act* prescribes a mandatory procedure in the termination of employment and itemises the elements of procedural fairness as set out by the Court of Appeal in *Postal Corporation of Kenya V Andrew K. Tanui* [2019] eKLR namely; reasons why termination of employment is being considered, explanation of the grounds of termination in a language understood by the employee, entitlement of the employee to the presence of a fellow employee of his/her choice or shopfloor representative during the explanation of the grounds and hearing and considering the representations by the employee and the employee of his choice.
91. In the instant case, it is clear that the Respondent issued a notice to show cause dated 21<sup>st</sup> December, 2021 and demanded that it be responded to within 48 hours, which was unreasonable in light of the allegations made against the Claimant, who endeavoured and responded on 23<sup>rd</sup> December, 2021.
92. Notably, after the response, the Respondent commissioned an Audit and a report dated 8<sup>th</sup> March, 2022 was prepared. The audit investigated fraud, insider lending and gross misconduct and its scope was review of loan portfolio for staff and members in question as at 31<sup>st</sup> January, 2022 and review of member files for PF 0270, 8004 & 8001 who were super guarantors.
93. Clearly, the Respondent considered the audit in its endeavour to sustain the allegations made against the Claimant.
94. Although the report was prepared after the Claimant's response to the notice to show cause, RWI confirmed, on cross-examination that a copy was not availed to the Claimant.
95. Similarly, after the Claimant received an invitation to attend the disciplinary hearing slated for 18<sup>th</sup> June, 2022 at the Respondents Board room at 9.00am, the Claimant vide letter dated 13<sup>th</sup> June, 2022, sought eleven (11) identifiable documents but only one (1) was provided.



96. RWI confirmed that the Respondent only shared what it could yet it had custody of all the documents identified by the Claimant.
97. According to the Claimant, these documents were essential in preparation of the hearing and it behooved the Respondent to supply them to guarantee the Claimant the constitutional right of fair hearing.
98. It is trite law that availment of relevant documents to the accused person or employee is an integral part of the right to be heard.
99. The foregoing is fortified by the sentiments of the Court of Appeal in *Postal Corporation of Kenya V Andrew K. Tanui* (supra) where the Court stated as follows:

“...The board had in its possession the very document that formed the basis of the charges framed against the Respondent but kept it away from him. Even in criminal trials which are more serious in nature, an accused is entitled to the statements that support the charges laid against him. That is the essence of fairness even outside a judicial setting. The Respondent faced serious indictments which could torpedo his entire career and destroy his future”.

100. These sentiments apply on all fours to the circumstances of the instant suit.
101. Since the Claimant was suspended pending further investigation, which was undertaken and a report prepared, it was only fair that a copy be availed to the Claimant as she prepared on how to counter the charges at the hearing.
102. The foregoing violation of the right to be heard is exacerbated by the fact that the Claimant formally requested for specific documents and they were not availed and no reason was provided.

See also *Regent Management Ltd V Wilberforce Ojiambo Oundo* [2018] eKLR.

103. Similarly, Section 4(3)(g) of the *Fair Administrative Action Act* is unambiguous that;

Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision,

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) Information, materials and evidence to be relied upon in making the decision or taking the administrative action.

104. Finally, and consistent with the foregoing, the Respondent refused to share the minutes of the disciplinary hearing, a fact RWI confirmed on cross-examination. The Claimant stated as much on the re-examination and did not sign the minutes.
105. The minutes would have enabled the Claimant effectively prosecute the appeal dated 26<sup>th</sup> July, 2022. In her appeal, the Claimant revisited the issue of non-availment of the documents she had requested



for and expressed displeasure with the manner in which the Respondent treated her on the issue of documents.

106. The Court does not find it puzzling that the Claimant appealed the summary dismissal and was invited for the appeal hearing but did not show up.
107. For the foregoing reasons, it is the finding of the Court that the Respondent has failed to demonstrate that the summary dismissal of the Claimant from employment was conducted in accordance with the precepts of procedural fairness.

### **Appropriate reliefs**

108. Having found that the summary dismissal of the Claimant by the Respondent was procedurally flawed, the Court proceeds as follows;

#### **i. Declaration**

109. Having found as above the declaration that the Claimant's dismissal by the Respondent was unlawful and unfair is merited.

#### **ii. Pay in lieu of notice**

110. Having found that the summary dismissal of the Claimant by the Respondent was substantively justifiable the claim for pay in lieu of notice is unsustainable by dint of Section 44(1) of the [\*Employment Act\*](#).

#### **iii. Damages for unfair dismissal**

111. Although no action in damages lie for unfair dismissal or termination of employment, having found as above, the Claimant is entitled to compensation by dint of Section 49(1)(c) of the [\*Employment Act\*](#).
112. The Court has considered that the Claimant was an employee of the Respondent for a long time, (28 years) and had no recorded incidences of misconduct, warning or disciplinary hearing, appealed the Respondent's decision but did not attend the hearing after invitation, did not express her wish to continue in the Respondent's employment or indicate her expectation as to the length of time for which her employment might have continued but for the termination. The Court has also considered the fact that the Claimant substantially contributed to the termination of her employment on account of commissions and omissions.
113. In the circumstances, the Court is satisfied that the equivalent of 2 months salary is fair, Kshs.398,168.00.

#### **iv. Service pay for 28 years**

114. The Claimant provided no evidence of entitlement to service pay.
115. Relatedly, copies of the Claimant's pay slips on record show that the Respondent was deducting N.S.S.F dues and remitting the same and no evidence has been availed to prove that N.S.S.F deductions were not being remitted and for how long.
116. In sum, the claim lacks particulars and supportive evidence and is accordingly dismissed.



#### v. Leave

117. Neither the Claimant's written statement dated 3<sup>rd</sup> November, 2022 nor the oral testimony adduced in Court made reference to any outstanding leave days, when the days accrued and how many they were.
118. The prayer lacks supportive evidence and is dismissed.

#### vi. Salary till retirement

119. This prayer lacks factual or legal anchorage and is unsustainable.
120. Relatedly, the prayer relates anticipatory earnings and thus not earned by or payable to the Claimant by dint of Section 17(1) of the Employment Act and it is accordingly dismissed.

See D K. Njagi Marete V Teachers Service Commission [2020] eKLR, Elizabeth Wakanyi Kibe V Telkom Kenya Ltd [2014] eKLR among others.

#### vii. General and exemplary damages

121. The Claimant provided no scintilla of evidence to demonstrate entitlement to general or exemplary damages.
122. The Claimant lacks particulars and supportive evidence and it is dismissed.
123. In the upshot, judgment is entered in favour of the Claimant against the Respondent in the following terms.
- a. Declaration that the Claimant's dismissal by the Respondent was unfair and unlawful.
  - b. Equivalent of 2 months gross salary as compensation Kshs.398,168.00 with interest from the date hereof.
124. For the avoidance of doubt all other prayers are dismissed.
125. There shall be no orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 21<sup>ST</sup> DAY OF NOVEMBER, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

