



**Walker v Valar Frontiers (Kenya) Limited (Cause 161 of 2018)  
[2024] KEELRC 2779 (KLR) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2779 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 161 OF 2018  
AK NZEI, J  
NOVEMBER 8, 2024**

**BETWEEN**

**JOHN ROBERT WALKER ..... CLAIMANT**

**AND**

**VALAR FRONTIERS (KENYA) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit herein was instituted by the Claimant vide a Memorandum of Claim dated 22<sup>nd</sup> March, 2018 and filed in Court on even date. The Respondent filed Response to the Claim and a Counter-claim on 5<sup>th</sup> April, 2018. The Claimant defended the Respondent's Counter-claim vide a defence to Counter-claim filed in Court on 27<sup>th</sup> April, 2018. Parties subsequently amended their respective pleadings.
2. Vide an amended Memorandum of Claim dated 12<sup>th</sup> October, 2018, the Claimant sought the following reliefs against the Respondent:-
  - a. A declaration that the Claimant was constructively terminated from employment by the Respondent.
  - b. A declaration that the said constructive termination was unlawful, unfair and amounted to unfair labour practice.
  - c. An order for the Respondent to permanently reinstate the Claimant to the position that he held as at 25<sup>th</sup> February, 2018 before his termination without loss of salary and other benefits for the period that he has been out of employment.
  - d. An order that the Respondent do pay the Claimant performance bonus as awarded to the Claimant in October 2017 plus interest ..... USD16,000.
  - e. An order that the Respondent do reimburse the Claimant relocation costs for the Claimant's spouse and child from Pakistan to Kenya ..... USD5,000.



That in the Alternative to prayers (a) to (e) above, an order that the Claimant be paid by the Respondent as follows:-

- a. One month salary in lieu of notice ..... USD 13,125.
- b. 20 days severance pay as confirmed by the Respondent ..... USD 11,931.82.
- c. 4 days accrued but unpaid leave as confirmed by the Respondent ..... USD 2,836.36.
- d. October 2017 performance bonus ..... USD 16,000.
- e. Unpaid salary from 1<sup>st</sup> April, 2018 to 17<sup>th</sup> May, 2018 being part of the period when Court Orders restraining the Respondent from terminating the Claimant's employment were subsisting ..... USD 20,562.
- f. Damages for unlawful/unfair termination at the rate of 12 months' gross salary ..... USD 157,500.
- g. Reimbursement of relocation cost for the Claimant, spouse and child from Ukunda to the point of hire (Leads, England) ..... USD 10,000.
- h. General damages for emotional trauma, distress and inconvenience, to be assessed by the Court.
- i. Any other relief as may be deemed necessary by this Honourable Court.
- j. Costs of the suit plus interest.

3. The Claimant pleaded:-

- a. That he was employed by the Respondent on 26<sup>th</sup> September, 2016 as a Resident Security Project Manager, and that his contract provided for:-
  - i. an annual salary of Kshs.150,000/= in the first year.
  - ii. 5% increase in salary for the second year.
  - iii. performance review every six (6) month, and
  - iv. relocation of the Claimant by the Respondent from point of hire in England to Ukunda and back at the termination of contract.
- b. That having been contracted by another entity (Base Titanium Limited) to provide security services, the Respondent deployed the Claimant to work at the Mombasa and Kwale Sites of the said Base Titanium Limited.
- c. That throughout his tenure of service to the Respondent, the Claimant executed his duties with exceptional commitment and professionalism to the satisfaction of the Respondent. That upon performance review on 24<sup>th</sup> February, 2017 where the appraisal graded eleven (11) competencies, the Claimant scored seven (7) A's (well above expected standard) and four (4) B's (above expected standard).
- d. That after a further appraisal in October 2017, the Claimant was awarded a performance bonus of USD 16,000, along with minor improvements to the terms of the contract such as enhanced television package. That the bonus remains unpaid for unclear reasons.



- e. That in the afternoon of 25<sup>th</sup> February, 2018, the Respondent's employees, Gabriel Oser (Chief Executive Officer) and a Mr. James Dutknowsi, summoned the Claimant to a house in Diani where two employees of the Respondent lived, and thereat handed the Claimant a letter of termination on false account of poor performance.
- f. That shocked, the Claimant objected to the termination and made his objection known to the Respondent's said representatives.
- g. That the Respondent's decision to serve the Claimant with a termination letter on account of poor performance was not only unfair and unlawful, but also malicious and in bad faith in view of his exemplary performance in October 2017 and an award of a bonus in the sum of USD 16,000, the fact that the next performance review was not due until March 2018, no performance lapses had been brought to assist with a forthcoming security review of the Respondent's client's (Base Titanium Limited's) soon to be set up mining operations in the Republic of Madagascar. That this would not have been the case had the Claimant's performance been unsatisfactory to the Claimant's attention prior to the termination, the Respondent had not put the Claimant on any performance improvement plan and that in February 2018, the Claimant had been selected by the Respondent.
- h. That while still in shock, the Claimant was advised by Gabriel Oser that he had an option of resigning immediately (at the said meeting), whereupon his termination package would be honoured. That the Claimant was not given any opportunity to consider the options of termination or resignation or to seek legal opinion; and having realized that the Respondent was determined to repudiate the employment contract, the Claimant signed a resignation which was drafted and presented to him to sign.
- i. That the Claimant signed the resignation letter under duress and/or undue influence.
- j. That upon his forced resignation, the Claimant was immediately issued with a pre-written acceptance of resignation which also contained a statement of final dues; and was ordered to surrender the company laptop, cell phone and a car assigned to him. That the Claimant was also asked to move out of the company rented house after 10 days, and was verbally told not to attend to his contractual duties during the 30 days' notice period.
- k. That the Claimant did not resign voluntarily; and that the Respondent's act of forcing him to resign constituted constructive termination of his employment, in view of the foregoing facts.
- l. That the Respondent's act of constructively terminating the Claimant's employment was unfair and cruel, and amounted to an unfair labour practice contrary to Article 41 of *the Constitution* of Kenya 2010.
- m. That as a result of the abrupt and unlawful constructive termination, the Claimant suffered emotional distress, trauma and financial inability to meet his continuing obligations, for which he was seeking compensation.
- n. That the Respondent's said illegal actions were aggravated by the Respondent's failure to pay the Claimant's performance bonus of USD 16,000 awarded in October 2017, the fact that no plausible reason or justification was given to the Claimant for the inordinate delay in paying the bonus, and that the bonus was omitted in the calculation/statement of the Claimant's final dues. That the performance bonus should be paid with interest.
- o. That upon the Claimant taking up employment with the Respondent, it was agreed between the Claimant and the Respondent's Chief Executive Officer (Gabriel Oser) that the Claimant



would relocate his spouse and child from Pakistan to Kenya, and that the Respondent would reimburse the Claimant the relocation cost, an agreement which the Respondent never honoured despite full knowledge of the relocation. The Claimant demands reimbursement of the relocation cost.

4. The Respondent filed an amended Response to the Claimant's amended Memorandum of Claim and Counter-claim on 21<sup>st</sup> December, 2018, and:-
  - a. Admitted having employed the Claimant as pleaded by him in paragraphs 3 and 4 of his amended statement of claim, save that the date of employment was 20<sup>th</sup> October, 2016 and not 25<sup>th</sup> September, 2016; but denied being responsible for the Claimant's relocation upon termination. That any responsibility for the Claimant's relocation was vitiated by the circumstances under which the Claimant resigned.
  - b. That the Claimant was employed based on a work permit based on the outsourcing contract that the Respondent had with its client.
  - c. That from November 2017, the Respondent started receiving complains from the client to the effect that the Claimant lacked concentration in his work and was spending much of his time work looking for prospects of being employed elsewhere, an apathy which persisted through to February 2018.
  - d. That the bonus pleaded to by the Claimant covered the period 20<sup>th</sup> October, 2016 to 18<sup>th</sup> October, 2017, during which period the Respondent had no substantive complaint against the Claimant.
  - e. That the Respondent did not hand the Claimant a termination letter as pleaded by him, and that the meeting pleaded to had been called to informally bring to the Claimant's attention the concerns being raised by the client and to have his provisional responses. That in the course of the session, the Claimant offered to resign if the client was dissatisfied with his services.
  - f. That the resignation was out of the Claimant's own choice, and that he was neither coerced nor misled into tendering his resignation letter, which he typed out of an available computer and signed.
  - g. That the Respondent did not issue the Claimant with a pre-written letter of acceptance of resignation. That having voluntarily resigned, the Claimant had no justification of retaining the Respondent's laptop, cell phone and car assigned to him for more than 24 hours.
  - h. That even though the Claimant was entitled to payment of the pleaded bonus, he and other employees entitled to payment of bonus were, vide an email letter dated 14<sup>th</sup> February, 2018, informed by the Respondent that payment of bonus would be suspended for the time being in view of an audit of the Respondent's financial transactions which was being undertaken by the Kenya Revenue Authority. That no subsequent bonus has been declared to date.
  - i. That at the time of employment, the Claimant presented himself as being single, and that his contract of employment did not cover any future family he would have.
  - j. That the Claimant gave a thirty days' resignation notice on 25<sup>th</sup> February, 2018 whereby he was to serve the notice period and was to be paid his salary at the end of the thirty days, but came to court disputing his resignation and thereby declined to accept the terms of his resignation. That the Claimant was fully paid for the notice period which he was serving and at the same time enjoying an injunctive order. That the Claimant is not entitled to notice pay.



- k. That severance pay of 20 days was offered as a condition of accepting the Claimant's resignation, and the Claimant will be willing to pay the same on that condition, but not on condition that the Claimant was constructively dismissed.
  - l. That the Claimant is entitled to 4 days accrued but untaken leave amounting to USD 2,836/36, which the Respondent is willing to pay on the basis that the Claimant resigned.
  - m. That the Claimant was paid his salary upto, and including 12<sup>th</sup> April, 2018 when his work permit was cancelled by the Director of Immigration Services, and cannot ask to be paid his salary for the period 1<sup>st</sup> April, 2018 to 17<sup>th</sup> May knowing well that the injunctive orders he is relying on were frustrated by operation of the law when his permit was cancelled by the Immigration Department.
  - n. That the Claimant cannot claim compensation as he was not unfairly terminated, and that in the alternative, he mitigated his losses by obtaining employment immediately upon his resignation.
  - o. That the Respondent was not obligated to relocate the Claimant to Leeds, England, as it was not a condition of his employment, and that relocation of the Claimant's wife and child from Pakistan was not the Respondent's obligation.
  - p. That upon resignation, the Claimant sought employment, and was engaged by a company called Salama Fikira, and had no intention of relocating at all.
  - q. That general damages for emotional trauma, distress and inconvenience is not awarded for on alleged breach of contract.
5. By way of a Counter-claim, the Respondent sought the following reliefs:-
- a. A mandatory injunction be issued to the Claimant to recall the email letter dated 1<sup>st</sup> March, 2018 addressed to Mr. Tim Cartens, and further recall each and every email sent to all the persons to whom the said email was copied.
  - b. General damages for libel.
  - c. Aggravated damages for defamation.
  - d. Interest on (b) and (c).
  - e. Costs incidental to the suit.
  - f. Any other relief as the Honourable Court would deem fit.
6. When the suit came up for hearing before me on 22<sup>nd</sup> September, 2022, Counsel for both parties agreed to file respective agreed lists and bundles of documents and issues which would constitute documents to be considered by the court in determining the suit. Counsel further agreed that the Respondent's second (listed) witness, Jimmy Nyikuli, would testify in court on the said date.
7. The agreed pleadings and documents for the respective parties were as follows:-
- a. For the Claimant
    - i. the amended statement of claim dated 22<sup>nd</sup> March, 2018.
    - ii. list and bundle of documents attached to the Claimant's original statement of claim dated 22<sup>nd</sup> March, 2018.



- iii. transition report dated 25<sup>th</sup> January, 2018.
  - b. For the Respondent
    - i. the amended response to the amended statement of claim dated 14<sup>th</sup> December, 2018.
    - ii. replying affidavit sworn by the Respondent's Chief Executive Officer on 3<sup>rd</sup> April, 2018.
    - iii. a replying affidavit sworn by the Respondent's Chief Executive Officer on 28<sup>th</sup> April, 2018.
    - iv. a replying affidavit to the Notice to Produce sworn by the Respondent's Chief Executive Officer on 28<sup>th</sup> August, 2020.
    - v. a further affidavit sworn by the Respondent's Chief Executive Officer on 14<sup>th</sup> December, 2020.
    - vi. a consolidated list and bundle of documents dated 10<sup>th</sup> August, 2020.
8. Further, parties agreed that the Respondent's Counter-claim herein and any response thereto be withdrawn; and the same was/were withdrawn. Counsel for the Respondent undertook to furnish Counsel for the Claimant with the Respondent's Chief Executive Officer's affidavit sworn on 28<sup>th</sup> August, 2020 within seven (7) days of the said date.
9. Subsequently, the Respondent filed its agreed bundle of documents in support of its case on 13<sup>th</sup> October, 2022, while the Claimant filed his on 22<sup>nd</sup> November, 2022.
10. As already stated in this Judgment and as agreed by both parties, the Respondent's witness, Jimmy Nyikuli (RW-1) testified on 21<sup>st</sup> September, 2022. Duly sworn, the witness told the Court that he was a Legal Officer in the Ministry of Interior, Directorate of Immigration Services. He testified, inter alia, that he had with him the Claimant's file under British Passport No. xxxxxx and Work Permit No. xxxxxx; the File Number for the Claimant's Special Pass being xxxxxx. It was RW-1's testimony that a Special Pass is a temporary permit which allows one to work for 6 months. That it is issued for 3 months and may be issued for another 3 months. That the Claimant was first issued with a Special Pass on 22<sup>nd</sup> December, 2016 upon an application in that regard by the Respondent. That on 15<sup>th</sup> November, 2016, the Respondent applied for a Work Permit, and that the Claimant was issued with a two years' work permit on 20<sup>th</sup> February, 2017 upon payment of the statutory permit fees of Kshs.400,000/= . That the permit was set to expire on 19<sup>th</sup> February, 2019.
11. It was RW-1's further testimony that on 3<sup>rd</sup> April, 2018, the Directorate of Immigration Services received a letter from the Respondent's Chief Executive Officer, Mr. Gabriel A. Oser, (dated 26<sup>th</sup> February, 2018), requesting that the Claimant's Work Permit be cancelled, and attaching a letter of release of the Claimant. That on 12<sup>th</sup> April, 2018, the Directorate of Immigration Services wrote to the Respondent confirming cancellation of the Claimant's work permit.
12. RW-1 further testified that on 18<sup>th</sup> April, 2018, the Directorate of Immigration Services received an application from a company known as Salama Fikira Group Limited requesting for a special pass for the Claimant, which was issued on 3<sup>rd</sup> May, 2018 and subsequently renewed on 6<sup>th</sup> August, 2018.
13. Cross-examined, RW-1 testified that he received the letter of release of the Claimant, dated 26<sup>th</sup> February, 2018, on 3<sup>rd</sup> April, 2018, and that attached to the letter of release was the Claimant's Original Work Permit No. xxxxxx. That the date of an application is the date when the same is submitted, and



that an employer is obligated to notify the Department when an employee has been terminated. That the Department of Immigration Services (Department) was not served with any Court Order relating to cancellation of the Claimant's Permit; and that RW-1 was not aware of the Court's Order dated 23<sup>rd</sup> March, 2018. That the Department would have obeyed the Court order had the same been brought to its attention. That the Claimant's Work Permit was cancelled on 12<sup>th</sup> April, 2018, and six days later he applied for a Special Pass to regularise his status. That to the Department, this was a reasonable time.

14. On application by Counsel for the Claimant, and on hearing Counsel for the Respondent, the Court made the following Orders, while RW-1 was still in the witness stand:-
  1. The witness (RW-1) is directed to avail certified copies of all the documents that he has referred to in his evidence, and to furnish the same to both the Court and Counsel for both parties. This should be done within 14 days of today.
  2. Any information in those documents that is not relevant to the evidence given by the witness may be redacted from copies of the documents to be given by the witness to the Court and to parties to the case herein.”
15. Re-examined, RW-1 testified that the letter (dated 26<sup>th</sup> February, 2018) requesting for cancellation of the Claimant's work permit was received on 3<sup>rd</sup> April, 2018 (as per the stamp on it), and was acted upon on 12<sup>th</sup> April, 2018. That as from 12<sup>th</sup> April, 2018, the Claimant did not have a work permit to work for the Respondent. That the application for a special work permit by Salama Fikira was received on 18<sup>th</sup> April, 2018, and a temporary work permit was issued on 3<sup>rd</sup> May, 2018.
16. It is worthy noting that RW-1 did not comply with the Court's Orders given on 22<sup>nd</sup> September, 2022 on furnishing of copies of the documents referred to in his evidence, either within the ordered period of 14 days or at all. On 7<sup>th</sup> December, 2022, I granted 30 more days for the documents to be filed, but none was filed. On 2<sup>nd</sup> February, 2023, I declined to extend time further, and directed Counsel to file written submissions within specific time lines. An application dated 8<sup>th</sup> February, 2023 was on 9<sup>th</sup> February, 2023 filed seeking review of this Court's Orders dated 2<sup>nd</sup> February, 2023, and was dismissed vide this Court's Ruling delivered on 19<sup>th</sup> October, 2023. Written submissions were subsequently filed by both parties.
17. Having considered the amended pleadings filed by both parties, the documents filed alongside the initial Memorandum of Claim and affidavits placed before the court for consideration in determining the suit, and having noted that both parties did not include framed issues for determination in their respective agreed bundles of documents, issues that present for determination, in my view, are as follows:-
  - a. Whether the Claimant's employment was constructively and unfairly terminated by the Respondent.
  - b. Whether the Respondent is entitled to the reliefs sought, or to any of them.
18. On the first issue, it was a common ground that in the afternoon of 25<sup>th</sup> February, 2018, the Respondent's Chief Executive Officer and another employee of the Respondent summoned the Claimant to a residential house in Ukunda. While the Respondent pleaded that the purpose of the meeting that afternoon was “to informally bring to the attention of the Claimant the concerns being raised by the Respondent's client and to have the Claimant's provisional responses”, the Claimant pleaded that at the said meeting, “he was shocked when he was handed a termination letter on false account of poor performance, . . . and that while still in shock, the Respondent's Chief Executive Officer (Gabriel Oser) advised him that he had an option of resigning immediately, whereupon his



- termination package would be honoured. That he (the Claimant) was not given any opportunity to consider the two options of resignation or termination, or to seek legal opinion or representation.”
19. The Claimant further pleaded that “having been left with no option other than immediate termination, and having realised that the Respondent was determined to repudiate the employment contract, he opted for resignation . . . and that a resignation letter was immediately drafted and presented to him for signing, which the Claimant signed, clearly under undue influence and/or duress”.
20. It was the Claimant’s further pleading that “upon his forced resignation, he was immediately issued with a pre-written acceptance of resignation which also contained a statement of final dues . . . That the Claimant did not resign voluntarily, and that the Respondent’s action of forcing him to resign constituted constructive termination of his employment . . .”
21. Although the Respondent denies having either given a termination letter to the Claimant on 25<sup>th</sup> February, 2018 or having forced him to resign as pleaded by him, I have noted with keen interest paragraph 14A(e) of the Respondent’s Amended Response to the Claimant’s Amended Memorandum of Claim, dated 14<sup>th</sup> December 2018, whereby the Respondent pleaded as follows:
- e. Severance pay of 20 days was offered as a condition of accepting the Claimant’s resignation. The Respondent will be willing to pay the amount on that condition and not on the basis that the Claimant was constructively dismissed.” (Emphasis added).
22. In my view, the foregoing pleading is the equivalent of the mythological “Achilles’ heel”, a weakness in the form of an admission by the Respondent of forced/coerced (involuntary) resignation by the Claimant, despite an otherwise overall denial of the pleaded involuntary resignation. This particular pleading gives away the Respondent’s defence regarding the said issue. Otherwise, why would there be a condition, in the wording of the Respondent’s defence, that appears to incentivise or to entice the Claimant to sign the resignation letter rather than face an imminent termination.” Parties are always bound by their pleadings.
23. Further, it is clear from paragraph 8 of the Respondent’s Amended Response that the meeting held on 25<sup>th</sup> February, 2018 had been convened to discuss the Claimant’s performance (“to informally bring to the Claimant’s attention the concerns being raised by the Respondent’s client and to have his provisional responses.”). By dint of Section 41 of the *Employment Act*, the Claimant ought to have been informed of the “concerns” involved beforehand, and ought to have been informed of his right to be accompanied to the meeting by a fellow employee or a union official (if unionised).
24. The nature of “concerns” being discussed at the said meeting held on 25<sup>th</sup> February, 2018 was clearly pleaded at paragraph 6 of the Respondent’s Amended Response where the Respondent pleaded as follows:-
- “6. . . . Commencing in November, 2017, the Respondent started receiving complaints from the client to the effect that the Claimant lacked concentration in his work and was spending much of his duty time looking for prospects of being employed elsewhere . . .”
25. Where poor performance of an employee is alleged, whether formally or informally, and the same becomes the subject of a hearing and/or discussion, Section 41 of the *Employment Act* must be complied with. The Section provides as follows; in mandatory terms:-
1. Subject to Section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to



the employee, in a language the employee understands, the reason for which the employer is considering termination, and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

2. Notwithstanding any other provisions of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under Section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”
26. The foregoing mandatory procedure is the fair procedure referred to in Section 43 of the [Employment Act](#), and failure to adhere to it renders the process of terminating an employee’s employment, whether constructively or otherwise, unfair.
27. In view of all the foregoing, it is my finding that faced with the Respondent’s conduct on 25<sup>th</sup> February, 2018, which conduct demonstrated that the Respondent was no longer interested in being bound by the terms of the Claimant’s contract, and being faced with the option of termination of employment, the Claimant’s resignation on the said date was not voluntary, and it amounted to unfair constructive dismissal/termination. I so hold.
28. The Black’s Law Dictionary 10<sup>th</sup> Edition defines constructive dismissal as:-

“An employer’s creation of working conditions that leave a particular employee or a group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer’s course of action that, being detrimental to an employee, leaves the employee no option but to quit.”
29. The Court of Appeal stated as follows in the case of Coca Cola East & Central Africa Ltd – vs – Maria Kagai Ligaga [2015] eKLR:-

“Constructive dismissal occurs where an employee terminates the contract under which he is employed, (with or without notice) in circumstances in which he is entitled to terminate it without notice, by reason of the employer’s conduct. The employer’s behaviour in either case must be shown to be heinous, so intolerable that it made it considerably difficult for the employee to continue working. The employee initiates the termination believing himself to have been fired. The employee needs to show that the employer, without reasonable or proper cause, conducted himself in a manner likely to destroy or seriously damage the employment relationship. Resignation is regarded as constructive dismissal if the employer’s conduct is a significant breach of the contract of employment and that the conduct shows that the employer is no longer interested in being bound by the terms of the contract. The employee’s resignation is therefore treated as an actual dismissal by the employer, and the employee may claim compensation for unfair termination.”
30. On the second issue, and having made a finding that the Claimant’s employment was constructively terminated by the Respondent and that the termination was unfair, and having taken into account the circumstances in which the Claimant’s employment was abruptly terminated, I award the Claimant the equivalent of seven (7) months’ salary as compensation for unfair termination of employment. It was a common ground that the Claimant was earning USD 13,125 per month at the time of termination. The equivalent of seven (7) months’ salary is therefore USD 13,125 X 7 = USD 91,875, which I award the Claimant.



31. The Claim for USD 13,125 being one month salary in lieu of notice is allowed. Although the Respondent stated in its resignation acceptance letter dated 25<sup>th</sup> February, 2018 that it would pay the one month notice pay, it was not demonstrated by the Respondent that payment was made.
32. The claim for USD 2,836.36 being payment for accrued but untaken leave is admitted by the Respondent in its pleadings, and is allowed.
33. The claim for USD 11,931.82 being 20 days severance pay, calculated and confirmed by the Respondent in its resignation acceptance letter dated 25<sup>th</sup> February, 2018 as a benefit payable to the Claimant, is allowed. The authenticity of the said letter was never denied or questioned by the Respondent. Indeed, the Respondent produced the said letter in evidence by annexing it to the affidavits presented to this Court for consideration in determining the suit.
34. The Claim for USD 16,000 being a bonus awarded to the Claimant in October 2018 is allowed. The claim was never disputed by the Respondent, which only gave excuses in its pleadings on why payment of the bonus was delayed.
35. The claim for USD 20,562 being salary for 1<sup>st</sup> April to 17<sup>th</sup> May, 2018 being the period of subsistence of Court Orders restraining the Respondent from terminating the Claimant's employment is declined as the Claimant is not shown to have been working for the Respondent during that period. Indeed, RW-1 testified that a company by the name Salama Fikira Group Limited presented an application for the Claimant's Special Pass on 3<sup>rd</sup> May, 2018.
36. The claim for USD 5,000 being the cost of relocating the Claimant's wife and child from Pakistan to Kenya was not proved, and is declined.
37. The claim for USD 10,000 being relocation cost of the Claimant, his wife and child from Ukunda to the point of hire (Leeds, England) was not proved, and is declined.
38. The claim for general damages for emotional trauma, distress and inconvenience is declined, as an award of such damages is not available to the Claimant under Section 49(1) of the *Employment Act*, and especially after an award for compensation for unfair termination of employment has already been made to him. Awarding general damages under such circumstances would, in my view, amount to double award.
39. The prayer for reinstatement cannot be allowed, as it is over 3 years since the Claimant was terminated. Section 12(3)(vii) of the *Employment and Labour Relations Court Act* is called in aid.
40. In sum, and having considered written submissions filed by Counsel for the parties herein, Judgment is hereby entered for the Claimant against the Respondent as follows:-
  - a. Compensation for unfair termination of employment ..... USD 91,875.
  - b. One month salary in lieu of notice ..... USD 13,125.
  - c. Accrued but untaken leave ..... USD 2,836.36.
  - d. 20 days severance pay ..... USD 11,931.82.
  - e. October 2017 performance bonus ..... USD 16,000.Total = USD 135,761.18
41. The awarded sum shall be subject to statutory deductions pursuant to Section 49(2) of the *Employment Act*.



42. The Claimant is awarded interest on the awarded sum, to be calculated at court rates from the date of this Judgment.

43. The Claimant is awarded costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH NOVEMBER 2024**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....Claimant

.....Respondent

