



Alwang'a v Sacco Societies Regulatory Authority & another (Employment and Labour Relations Cause 749 of 2015) [2023] KEELRC 1371 (KLR) (31 May 2023) (Judgment)

Neutral citation: [2023] KEELRC 1371 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 749 OF 2015**

J RIKA, J

MAY 31, 2023

BETWEEN

RENOLD MBECHE ALWANG'A CLAIMANT

AND

SACCO SOCIETIES REGULATORY AUTHORITY 1ST RESPONDENT

**MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE
DEVELOPMENT 2ND RESPONDENT**

JUDGMENT

1. The Claimant filed his Statement of Claim, on May 6, 2015.
2. He states that he was employed by the 2nd Respondent, through a letter of appointment, dated May 26, 2008.
3. He was seconded to the 1st Respondent for a period of 3 years, on June 19, 2008.
4. He was required to apply for the position of ICT Manager on secondment. The position was advertised internally. He was successful upon interview.
5. At the end of the 3 years, the 2nd Respondent wrote to the 1st Respondent requesting the 1st Respondent to release the Claimant back to the 2nd Respondent, for further deployment. The 1st Respondent wrote back, stating it was now a fully established authority, and had absorbed the Officers on secondment, including the Claimant, on permanent and pensionable basis. His years of service under the 2nd Respondent were to be transferred to the 1st Respondent's Retirement Benefits Scheme, to ensure he did not lose his years of service. Transfer was approved by the Retirement Benefits Authority.
6. The 2nd Respondent wrote to the 1st Respondent requesting that the date when the Claimant was absorbed as permanent and pensionable Employee of the 1st Respondent, be indicated to the 2nd Respondent. It was indicated as July 1, 2010.



7. The Claimant applied for a loan with CFC Bank, on August 11, 2014. The 1st Respondent wrote to the Bank, confirming that the Claimant was its ICT Manager.
8. The 1st Respondent wrote a letter to show cause why disciplinary action should not be taken against the Claimant, on September 30, 2014. He replied on October 2, 2014. On October 14, 2014, the 1st Respondent wrote a cautionary letter to the Claimant, replicating the letter to show cause.
9. On November 11, 2014, the 1st Respondent wrote to the 2nd Respondent, purporting to return the Claimant to the 2nd Respondent for redeployment. The 1st Respondent allegedly terminated secondment.
10. On December 11, 2014, the 2nd Respondent wrote to the Claimant threatening to remove him from the payroll if he did not report to the 2nd Respondent for redeployment.
11. On December 18, 2014, the 2nd Respondent through the 1st Respondent wrote to the Claimant, informing him that he had deserted, and therefore removed from the payroll. He was last paid his salary in November 2014.
12. He reported for duty at the 1st Respondent's and found his office occupied by another person. He was told that he had since been dismissed from employment.
13. The 1st Respondent contributed 21% of the Claimant's basic pay from July 1, 2010 to a private pension scheme, amounting to Kshs 63,840 per month, while the Claimant contributed Kshs 16,030 monthly, from his salary.
14. He stated that the 1st Respondent's decision purporting to revert him to the 2nd Respondent was unlawful. The 2nd Respondent's decision to terminate the Claimant's contract was ultra vires and unlawful. There was no subsisting contract of employment between the Claimant and the 2nd Respondent.
15. The Claimant states that he was 32 years old, on termination, and expected to work until retirement. He had 28 years ahead of him.
16. He was not paid terminal benefits on termination.
17. His last gross monthly salary was Kshs 304,000.
18. He prays for Judgment against the Respondents as follows: -
 - a. Declaration that termination was unfair.
 - b. Declaration that there was no privity of contract between the Claimant and the 2nd Respondent.
 - c. Declaration that the 2nd Respondent acted ultra vires in purporting to terminate the Claimant's employment with the 1st Respondent.
 - d. Payment of –
 - i. 12 months' salary in compensation for unfair termination at Kshs 3,648,000.
 - ii. 1-month salary in lieu of notice at Kshs 304,000.
 - iii. Lost income for the remaining 28 years at Kshs 304,000 x 12 x 28 = Kshs 102,144,000.



- iv. Pension contribution by the Claimant and the Respondent, from July 1, 2010 at Kshs 3,355, 840; and Claimant's contribution at Kshs 817,530.
 - v. Service of 4 years at Kshs 608,000.
 - vi. Refund of staff benevolent fund at Kshs 51,000.
 - vii. 40 days of annual leave at Kshs 405,000.
- Total Kshs 111,233,370.
- e. Certificate of Service to issue.
 - f. Costs.
 - g. Any other relief the Court deems appropriate to give.
19. The 1st Respondent filed its Statement of Response on June 8, 2015. It states that it is non-suited. It is conceded that the Claimant was employed by the 2nd Respondent and seconded to the 1st Respondent, as pleaded. The right of dismissing seconded Employees, at all times, was vested in the 2nd Respondent. The 1st Respondent could only terminate the secondment agreement, not the contract of employment.
 20. At no time did the 1st Respondent absorb the Claimant as a permanent and pensionable Employee. He was interviewed by the 1st Respondent upon secondment to confirm his suitability. He was confirmed by the 1st Respondent to the position, on January 21, 2011, after completing a period of probation. If the 1st Respondent wrote to the Bank, confirming that the Claimant was its Employee, it was contextual and attendant to the existing circumstances.
 21. It is true that the 1st Respondent issued a letter to show cause to the Claimant, after its internet server broke down. He was the Head of Department at ICT and was required to explain the breakdown. He did not explain satisfactorily, and was issued a cautionary letter.
 22. While the 2nd Respondent wrote to the 1st Respondent on October 2, 2013, acknowledging that the 1st Respondent was fully operational, the Claimant had not resigned as an Employee of the 2nd Respondent. The 1st Respondent wrote another letter dated May 9, 2014 to the 2nd Respondent, and it was confirmed that the Claimant had not resigned. His contract with the 2nd Respondent subsisted.
 23. The process of transfer of service was not finalized. He was still an Employee of the 2nd Respondent as of September 19, 2014. His name had not been deleted from the 2nd Respondent's integrated data system. The 2nd Respondent wrote to the 1st Respondent on September 19, 2014, asking for the Claimant's resignation. None was available, and he remained an Employee of the 2nd Respondent.
 24. The 2nd Respondent undertook disciplinary action against the Claimant, on the understanding that he was its Employee. The 1st Respondent terminated secondment, on account of the Claimant's poor performance. Secondment was temporary transfer. The 1st Respondent was the Economic Employer of the Claimant, rather than his Legal Employer.
 25. As of the date of termination, the Claimant had been paid all his provident fund dues in the scheme operated by Kenindia Assurance Company. He was paid a sum of Kshs 1,355, 372, and signed a discharge voucher. Further, the 1st Respondent states that the Provident Fund is a duly registered legal entity, and the Claimant ought to have addressed his claim for provident funds against the Fund.
 26. The *Retirement Benefits Act* and Regulations provide a clear procedure and forum, for arbitration of pension disputes. The Court has no jurisdiction on this dispute.



27. The 1st Respondent has a staff welfare fund wrongly stated to be a staff benevolent fund by the Claimant. As of November 30, 2014, the Claimant had contributed Kshs 39,625. He applied for and was advanced a loan of Kshs 100,000. At the time he left employment, he owed a balance of Kshs 12,875.
28. Termination was based on valid reason and fair procedure. The Claimant failed to report for duty, at his assigned place of work. He was called to the Head Office for redeployment, but did not heed the call. He was issued a letter to show cause, which he ignored, warranting termination.
29. The Respondent counterclaims the sum of Kshs 12,875 from the Claimant, being the balance of loan advanced to the Claimant, under the staff welfare fund.
30. It is also counterclaimed that the Claimant failed to hand over an elite notebook, property of the 1st Respondent, valued at Kshs 175,000. He withheld an ipad belonging to the 1st Respondent, valued at Kshs 93,000. In total, the added value of the items, and loan balance, stands at Kshs 280, 875, which the 1st Respondent counterclaims from the Claimant.
31. The 1st Respondent prays for grant of the Counterclaim and dismissal of the Claim, with costs to the 1st Respondent.
32. The 2nd Respondent filed its Statement of Response on November 11, 2015. It states that the Claimant was employed initially by the Office of the President as an Information and Technology Officer. He was posted to the Ministry of Cooperative Development, before he was seconded to the 1st Respondent for 3 years.
33. The 2nd Respondent admits that it confirmed that the 1st Respondent is fully fledged Authority, and Officers seconded to it, had since been absorbed on permanent and pensionable basis. The 2nd Respondent was acknowledging notification from the 1st Respondent, that the 1st Respondent was fully established as an Authority. The 2nd Respondent concedes it authored the letter dated May 22, 2014, informing the Claimant that he had been absorbed, on permanent and pensionable basis.
34. It is conceded by the 2nd Respondent, that the 1st Respondent wrote to the 2nd Respondent terminating the Claimant's secondment. He was required to report to the 2nd Respondent for redeployment.
35. The 2nd Respondent denies having acted ultra vires. It administered disciplinary action against the Claimant, based on Public Service Code of Regulations and the Public Service Commission Discipline Manual. It acted fairly and lawfully.
36. The claim for terminal dues is a matter between the Claimant, and the 1st Respondent.
37. The Claim does not disclose a cause of action against the 2nd Respondent. The 2nd Respondent prays for its dismissal with costs.
38. The Claimant gave evidence on March 27, 2019, June 4, 2019 and February 25, 2020. He restated what is contained in the Statement of Claim, and his Witness Statement in his evidence in chief. On cross-examination, he reiterated that he was seconded by the 2nd Respondent to the 1st Respondent for 3 years; he was interviewed by the 1st Respondent as ICT Manager in a permanent and pensionable capacity; and that his main Employer was the 1st Respondent. The Respondents confirmed that the Claimant had been absorbed as a permanent and pensionable Employee of the 1st Respondent. The 1st Respondent did not advise the Claimant that it was terminating his contract of employment; it advised that it was terminating secondment. No ipad was allocated to the Claimant. He signed for one, but none was allocated. Redirected, he stated that he never went back to the 2nd Respondent after



- secondment. He was absorbed on July 1, 2010. The 1st Respondent never advised him to clear, after termination of secondment. He was not allocated any ipad.
39. The 2nd Respondent did not call any Witness.
40. The 1st Respondent's CEO, Peter Njuguna gave evidence on December 9, 2022, when hearing closed.
41. He adopted the documents filed by the Respondents and his Witness Statement. He confirmed employment and secondment of the Claimant, as pleaded in the Statement of Claim. Secondment was for 3 years, 2010-2013. The Claimant did not leave the 1st Respondent immediately at the end of secondment. The 1st Respondent returned him back to the 2nd Respondent, in 2014. Secondment was terminated on account of performance and poor discipline from the Claimant. This was between 2013 and the time of return to the 2nd Respondent.
42. Secondment was terminated in November 2014. He did not return to the 2nd Respondent. He never reported. He was provided tools of work- an ipad and a laptop. The tools were not returned to the 1st Respondent by the Claimant. The Counterclaim is based on confirmation by the 1st Respondent that the tools were supplied to the Claimant, and not returned on termination of secondment. The 1st Respondent had the intention to absorb the Claimant.
43. On cross-examination, the CEO told the Court that secondment was on August 19, 2010. It was for 3 years. The Claimant did not go back to the 2nd Respondent immediately after secondment. There was engagement between the Respondents, concerning the Claimant's employment. He was eventually released because of disciplinary and performance issues. The 2nd Respondent had requested that seconded Officers are released back to the 2nd Respondent. The 1st Respondent intended to absorb the Officers as permanent and pensionable Employees. The 1st Respondent's Human Resource Department, was aware of the seconded Employees' status. The Employees' had already been absorbed by August 2014. The 1st Respondent wrote asking about transfer of service to the 2nd Respondent. Employees had already been absorbed by the 1st Respondent. The 1st Respondent's letter of May 22, 2014, states that 1st Respondent's procedures were followed in absorption of the Claimant. The seconded Officers were recruited by the 1st Respondent after the 1st Respondent satisfied its procedures. The Officers were in the 1st Respondent's payroll. The prudent thing was to return the Claimant to the 2nd Respondent, because he did not resign from the 2nd Respondent. Secondment terminated after 3 years. It was not in issue, after termination.
44. Redirected, the CEO told the Court that the letter of August 11, 2014 by the Claimant, alleged that he was an Employee of the 1st Respondent. The letter is not factual. The Claimant did not exhibit any letter by the 1st Respondent, appointing him as permanent and pensionable. His salary was paid by the 1st Respondent. He did not resign from the 2nd Respondent. Intention would crystallize only after he presented a letter of resignation of his position with the 2nd Respondent. The 2nd Respondent still regarded the Claimant as its Employee at the close of the year 2014.
45. The issues are: -
- a. Whether the Claimant was an Employee of the 1st or 2nd Respondent, as at the time his contract was terminated.
 - b. Whether termination was unfair.
 - c. Whether the Claimant is liable to the 1st Respondent by way of Counterclaim.
 - d. Whether the Claimant merits the prayers sought.



- e. Who should pay the costs.

The Court Finds: -

46. Employment. The Claimant was employed by the Office of the President, as an Information Technology Officer, on May 26, 2008.
47. He was posted to the Ministry of Co-operative Development, on June 19, 2008.
48. Alongside 7 other Officers, he was seconded to the Sacco Societies Regulatory Authority, the 1st Respondent herein, on August 19, 2010.
49. Secondment was for a period of 3 years, ending in 2013.
50. Upon secondment, the Claimant applied for the position of ICT Manager, which was advertised internally by the 1st Respondent. He was interviewed and employed in the position.
51. On July 22, 2013, the 2nd Respondent wrote to the 1st Respondent, asking the 1st Respondent to note that the secondment of the 8 Officers, expired on May 31, 2013, and that the Officers should return to the 2nd Respondent for further deployment.
52. But the 1st Respondent wrote back to the 2nd Respondent on August 6, 2013, advising that the 1st Respondent had been fully established, and the seconded Officers absorbed as permanent and pensionable Employees of the 1st Respondent.
53. The 1st Respondent requested that because the Officers were now permanent and pensionable Employees of the 1st Respondent, and since the 1st Respondent had established a Pension Benefits Scheme approved by the RBA, the Officers' years of service be transferred to the 1st Respondent's Pension Scheme, so that the Officers do not lose their years of service worked under the 2nd Respondent.
54. The secondment would have expired on May 31, 2013. But the secondment agreement was clearly overtaken by the full establishment of the 1st Respondent as full Authority, and the clear absorption of the Claimant, among other seconded Officers, as permanent and pensionable Employees of the 1st Respondent. There was no returning to the 2nd Respondent.
55. The 1st Respondent was acting within its mandate, under Section 5 [3] of the *State Corporations Act*, which allows State Corporations to engage and employ such number of staff including the CEO, on such conditions of service as the Minister may, in consultation with the State Corporations Advisory Committee, advise. The 1st Respondent exercised its statutory mandate, and employed the Claimant as a permanent and pensionable Employee. Secondment was no longer an issue, after the 1st Respondent employed the Claimant.
56. A letter addressed to the Claimant's Bank CFC Stanbic by the 1st Respondent, dated August 11, 2014, long after the secondment lapsed, categorically confirmed that the Claimant was an Employee of the 1st Respondent. If any more information was required, the 1st Respondent asked the Bank to seek such information from the 1st Respondent, not the 2nd Respondent.
57. On July 15, 2014, the Chief Executive Officer of the 1st Respondent wrote to the Claimant, instructing him that there was a change in the reporting lines, and that the Claimant would henceforth report directly to the Chief Executive Officer. 'All other terms and conditions of employment remain as per your employment contract,' the CEO advised.



58. The 1st Respondent, not the 2nd Respondent issued the Claimant the letter to show cause, dated September 30, 2014, alleging negligence and absence from duty on the part of the Claimant. The 1st Respondent threatened to take disciplinary action against the Claimant. The response was addressed to the 1st Respondent. A cautionary letter was subsequently issued to the Claimant by the 1st Respondent. The letter advised that severe disciplinary action would be taken against the Claimant by the 1st Respondent in the future, in event the Claimant repeated the same or other violations of the 1st Respondent's Policies. The 1st Respondent, not the 2nd Respondent, retained disciplinary control over the Claimant.
59. Close on the heels of the performance and disciplinary-related complaints against the Claimant, the 1st Respondent revived its claims that the Claimant was on secondment, by writing a letter to the 2nd Respondent, dated November 11, 2014, alleging that the 1st Respondent had now established its staff in certain core areas, and the Claimant's services were no longer needed.
60. But already, the 1st Respondent had communicated to the 2nd Respondent the past year confirming that it was now a fully-fledged State Corporation, and had employed the Claimant on permanent and pensionable terms.
61. On the same day, the 1st Respondent wrote to the 2nd Respondent, alleging to terminate secondment. The 2nd Respondent wrote back to the Claimant through the 1st Respondent, stating that the Claimant had failed to report upon his release by the 1st Respondent, and consequently would be removed from the 2nd Respondent's payroll.
62. These correspondences between the Respondents, dating from November 11, 2014, were immaterial to the Claimant's employment on permanent and pensionable terms. The Claimant was longer on secondment at the time the 1st Respondent alleged to have terminated secondment. The 2nd Respondent's instructions to the Claimant to report to the its Head Office were instructions of a stranger. The threat of deletion / removal of the Claimant from the 2nd Respondent's payroll was immaterial. The Claimant was not on the payroll of the 2nd Respondent. He was on the payroll of his Employer, the 1st Respondent herein. All pay slips exhibited by the Parties were issued to the Claimant in the name of the 1st Respondent. The letter dated December 18, 2014 from the 2nd Respondent to the 1st Respondent, alleging that the Claimant had deserted duty, and subsequent decision to terminate his contract by the 2nd Respondent, all issued as a result of the misleading position taken by the 1st Respondent, that the Claimant was on secondment from the 2nd Respondent, rather than in employment of the 1st Respondent, after he was employed by the 1st Respondent on permanent and pensionable terms. Why would the 1st Respondent be terminating secondment on November 11, 2014, while the letter from the 2nd Respondent to the 1st Respondent dated July 23, 2013, reminded the 1st Respondent, that secondment was terminated on expiry of 3 years, on May 31, 2013? This was more than a year, to the date the 1st Respondent wrote to the 2nd Respondent alleging to terminate secondment.
63. The Claimant was an Employee of the 1st Respondent, and the 1st Respondent his Employer, within the meaning of Section 2 of the *Employment Act*, of the terms 'Employee' and 'Employer.' He rendered service to the 1st Respondent; he was remunerated by the 1st Respondent; he was under the disciplinary control of the 1st Respondent; and the 1st Respondent exercised managerial control over him. All facts lead to the conclusion that the Claimant was at the time his employment contract was allegedly terminated, an Employee of the 1st Respondent, on permanent and pensionable terms.



64. The Court is satisfied that the Claimant was in a contract of employment with the 1st Respondent, at the time the 1st Respondent purported to terminate secondment, and at the time the 2nd Respondent purported to terminate the Claimant's contract of employment.
65. Unfair termination. Procedure was botched from the inception, by the Respondents' misconception, about the Claimant's employment status. The 1st Respondent issued the letter to show cause and the cautionary letter, threatening to terminate the Claimant's contract, on performance and disciplinary grounds. He was told that repeat violations in the future could result in summary dismissal by the 1st Respondent.
66. That did not materialize, because the 1st Respondent reverted instead, to disowning the Claimant as its Employee. It resorted to the incorrect stance, concerning secondment of the Claimant. It was communicated to the 2nd Respondent that secondment had been terminated, and the Claimant required to report back to the 2nd Respondent. The 2nd Respondent, out of ignorance or inattention to what constitutes an employer-employee relationship, bought the idea floated by the 1st Respondent, that indeed the 2nd Respondent was still the Claimant's Employer.
67. The 2nd Respondent, acting ultra vires, purported to instruct an Employee who was not its own Employee, and who was no longer under its control, to report to its Head Office, failing which the Claimant would be deemed to have deserted, and would be removed from the 2nd Respondent's payroll. As observed above, the Claimant was in the payroll of the 1st Respondent. The 2nd Respondent took responsibility over an Officer who was no longer its Employee, and purported to terminate his contract.
68. Even had the 2nd Respondent been the Claimant's legitimate Employer, there was no disciplinary hearing concerning the allegations of desertion, availed the Claimant.
69. Procedure was fundamentally flawed, and on reasons which were not valid at all. The Claimant had no reason to report to the 2nd Respondent, as he was no longer an Employee of the 2nd Respondent. The *State Corporations Act*, draws a clear distinction between Ministries and State Corporations associated with those Ministries.
70. Counterclaim. The 1st Respondent through the Witness Statement of its CEO, exhibited a list of ipads allocated to its Officers. The Claimant was allocated, and signed acknowledging receipt of ipad serial number xxxx. Local Purchase Order number 1763759 shows the ipad was acquired at Kshs 93,000. There is a delivery note dated 30th January 2013 showing delivery of elite note books. The Claimant was supplied with an elite note book and acknowledged receipt on March 28, 2013. He did not dispute the value of these items, and failed to provide evidence, showing that he handed back the items to the 1st Respondent, when he left employment.
71. There is a loan application form filled by the Claimant, seeking a loan amount from the 1st Respondent's Welfare Fund, in the sum of Kshs 100,000. The 1st Respondents states that the Claimant had a balance of Kshs 12,875 at the time he left employment. The Claimant did not provide evidence to show that he cleared the loan.
72. The Counterclaim is supported by adequate documentary evidence. The Claimant did not show that he fully repaid the loan or handed back the working tools. The Counterclaim is granted as prayed, at Kshs 280, 875.
73. Remedies to the Claimant. It is declared that termination of the contract of employment between the Claimant and the 1st Respondent, by the 1st Respondent was unfair.
74. It is declared that there was no privity of contract between the Claimant and the 2nd Respondent.



75. It is declared that the 2nd Respondent acted ultra vires, in purporting to terminate the Claimant's contract with the 1st Respondent.
76. The prayer for compensation for unfair termination is allowed. The Claimant worked for a period of 4 years for the 1st Respondent. He had worked for the 2nd Respondent from May 2008 to August 2010 when he was seconded to the 1st Respondent. Cumulatively he worked for the Respondents for 6 years. He did not contribute to the circumstances leading to termination of his contract. He expected to serve until retirement at the age of 60 years. He was a young man aged 32 years, when his contract was terminated. He expected to serve for another 28 years. The 1st Respondent paid him nothing on termination. He is granted equivalent of 7 months' gross monthly salary, in compensation for unfair termination at Kshs 2,128,000.
77. The prayer for notice pay is granted, at Kshs 304,000, equivalent of 1-month gross salary.
78. Loss of income for a period of 28 years, at a whopping Kshs 102,144,000? Not likely. There was no guarantee that the Claimant would work until the age of mandatory retirement. He did not render any service to the public for 28 years, to demand that he is paid from public coffers, Kshs 102,144,000. The Court has taken into account that he expected to work for 28 years more, and that he had worked for 6 years for the Respondents, at the time of termination. In *Elizabeth Wakanyi Kibe v Telkom Kenya Limited [2014] e-KLR*, the Court of Appeal upheld the position that payment of anticipatory salaries and allowances up to the date of retirement, where an Employee's contract is terminated prematurely, is unreasonable. Employment remedies must be proportionate to the economic injury sustained by the Employee, not extortionate, or punitive. The prayer for anticipatory salaries is declined.
79. The Court has no jurisdiction on pension dispute between a member and the pension scheme, as held in Supreme of Court Kenya decision in *Albert Chaurembo Mumba & 70 Others v Maurice Munyao & 148 Others [2019] e-KLR*. The prayer for payment of pension contributions is declined.
80. The pay slips on record show that the Claimant was actively registered to the NSSF He was in a Pension Scheme, approved by the RBA. He was not eligible for service pay, under Section 35 [6] of the *Employment Act*.
81. The evidence on refund of staff benevolent fund was not articulate. The documentation by the Claimant was lacking. He did not make the Court understand the rules and regulations governing the fund, and did not distinguish the benevolent fund, from what the 1st Respondent stated was a staff welfare fund. The Court is not able to grant the prayer for refund of staff benevolent funds.
82. The Claimant did not specify when 40 days of annual leave accrued. He did not plead the period, or giving clear evidence, supported by leave application forms, showing a balance of 45 days. The prayer is rejected.
83. Certificate of Service to issue.
84. No order on the costs.

IN SUM IS ORDERED: -

- a. It is declared that termination of the contract of employment between the Claimant and the 1st Respondent, by the 1st Respondent was unfair.
- b. It is declared that there was no privity of contract between the Claimant and the 2nd Respondent.



- c. It is declared that the 2nd Respondent acted ultra vires, in purporting to terminate the contract of employment between the Claimant and the 1st Respondent.
- d. The 1st Respondent shall pay to the Claimant equivalent of 7 months' gross salary in compensation for unfair termination at Kshs 2,128,000 and notice of 1 month, at Kshs 304,000 – total Kshs 2,432,000.
- e. The Counterclaim is allowed at a sum of Kshs 280,875.
- f. Less the sum of Kshs 280,785 allowed in the Counterclaim, the 1st Respondent shall pay to the Claimant a total sum of Kshs 2,151,215.
- g. The Respondents shall issue to the Claimant his Certificates of Service, for the respective period the Claimant was ascertained by the Court to have worked for each Respondent.
- h. No order on the Costs.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF MAY 2023.

JAMES RIKA

JUDGE

