Samini v Medivet Products Limited (Cause 628 of 2016)
[2023] KEELRC 1280 (KLR) (31 May 2023) (Judgment)

Neutral citation: [2023] KEELRC 1280 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 628 OF 2016

JK GAKERI, J

MAY 31, 2023

BETWEEN

SALIM NDEWENI SAMINI ..... CLAIMANT

AND

MEDIVET PRODUCTS LIMITED ..... RESPONDENT

JUDGMENT

1. The Claimant commenced this suit by a Statement of Claim filed on 18th April, 2016 alleging unlawful and unfair termination of employment, non-payment of terminal dues and discrimination.

2. It is the Claimant's case that he was employed by the Respondent as a Microbiologist Analyst on 1st January, 2000 (the statement states February 1999) on a casual basis and was employed on 14th January, 2000 at Kshs.8,000/= which was subsequently reviewed to Kshs.48,501.25.

3. The Claimant avers that on 3rd and 4th June, 2015 after he had been granted leave to be away to accompany his child to school in Kakamega, fellow employees went on a go-slow claiming for arrears and all employees were involved.

4. That several employees including the Claimant were suspended but subsequently an agreement was reached not to victimize the employees and employees resumed duty.

5. That when he resumed work on 8th June, 2015, he was served with a letter directing him to proceed on compulsory leave of 16 days and on return another letter was issued on his role in the strike and was subsequently interrogated by the Management Committee on the occurrences on 3rd and 4th June, 2015 and his employment was terminated on 29th July, 2015 on account of having been involved in organizing and overseeing the illegal strike.

6. The Claimant further avers that in December 2015, he was invited to sign a payment voucher and did so and signed for the remaining amount in February 2016. That the amount was little and he had challenges in his family.

7. The Claimant avers that the Disciplinary Committee was improperly constituted in that the Human Resource Manager had no valid Practicing Certificate, it had no departmental representation and he was denied the right to call a colleague as a witness.

8. That he was discriminated on salary, was not accorded the right of appeal or he heard.

9. The Claimant prays for;

    i. Unpaid balance of due Kshs.606,189/=.

    ii. 2 months salary unpaid during suspension Kshs.97,002.50.

    iii. General damages.

    iv. Interest on (i), (ii) and (iii) at court rates.

    v. Costs of this suit.

Respondent's case

10. The Respondent filed its response to the claim on 3rd May, 2018 admitting that the Claimant was indeed its employee from 1st January, 2000 at the monthly salary alleged but denies having terminated the Claimant's employment unfairly.

11. It denies having acted in contravention of law with regard to the disciplinary proceedings.

12. The Respondent further avers that it did not owe the Claimant any dues as all amounts due were paid in full and the Claimant acknowledged receipt and absolved the Respondent from any further liability.

13. The Respondent prays for dismissal of the suit with costs.

Claimant's evidence

14. The Claimant testified that on 3rd June, 2015, he sought and was granted permission to proceed to Kakamega to attend to family matters and left the workplace after completing the leave sheet but was not given leave, though permission to be away was granted.

15. The witness admitted that on the material day, there was a go-slow at the workplace.

16. That on 8th June (Monday) when he reported to work, a letter directed him to proceed on leave and report back on 26th June on which date he received a show cause letter and was invited for a hearing on 29th June, 2015 and defended himself on the ground that he was not present during the strike.

17. On cross-examination, the witness confirmed that he was a member of the union.

18. That the union and Federation of Kenya Employers (FKE) were involved in the resolution of the issue and the union negotiated the amount paid which he had received.

19. The witness admitted that F.K.E had written to the Respondent and the union advising that the dismissal be treated as a normal termination.

20. That the union represented him during the negotiations.

21. Puzzlingly, the witness denied having been invited for a disciplinary hearing but agreed with counsel that he had been issued with a notice to show cause and his statement stated that he was indeed invited.

22. The witness testified that the amount he was paid was determined by the employer.

23. It was his testimony that one Abel Isaboke was an employee and he and another person had signed on behalf of the union and he was paid Kshs.592,708.00 though the statement of claim indicated he was paid Kshs.692,708.00.

24. On re-examination, the witness testified that the union was obligated to protect his rights and according to the union, his entitlement was Kshs.1,104,892/= and it was involved in the computation not him and the amount he received was less than what he had wanted as he was threatened by the Human Resource Manager.

25. He testified that he was interrogated by the investigating committee on his role in the strike and the reason for termination was not valid as the letter was silent on his contribution in the strike and termination of employment was unfair.

Respondent's evidence

26. RWI, Manish Dodhia testified that the Claimant was at the workplace on 3rd June, 2015 but sought permission to leave and it was granted.

27. On cross-examination, the witness testified that he was at work on 3rd and 4th June, 2015 but could not recall when the Claimant reported back.

28. That he did not participate in the investigations though one was conducted but no report was filed.

29. The witness confirmed that the letter dated 25th June, 2015 had no reason as to why the Claimant was implicated in the strike.

30. That the go-slow ended on 5th June, 2015 after a meeting between the employer, union and Federation of Kenya Employers.

31. The witness further confirmed that the letter of termination had not indicated the reason for termination of the Claimant's employment.

32. That the employees were on strike because of the Collective Bargaining Agreement and salary arrears.

33. The witness confirmed that the Claimant had permission to be away but could not tell when he left the premises.

34. That the union letter to the Respondent dated 15th December, 2015 had the figure of Kshs.1,104,892/= due to the Claimant and the total payable to him under the agreement was Kshs.592,708/=.

35. That Federation of Kenya Employers did not sign the payment since the amounts had already been agreed upon.

36. It was his testimony that the Collective Bargaining Agreement was registered sometime in 2016.

37. On re-examination, the witness testified that the amount cited by the Claimant was the union's proposal according to its computations.

38. That the Kshs.100,000/= was paid to all on humanitarian grounds 2 days after the unions letter of 15th December, 2015.

39. That Mr. Abel Isaboke Nyaramba was the Branch Secretary of the union at Ruiru.

Claimant's submissions

40. Counsel isolated no specific issues but addressed the facts of the case and the law.

41. Counsel submitted that the Claimant's suit was grounded on the right to fair hearing and fair termination. That the Claimant's termination warranted compensation as it was unlawful.

42. Counsel submitted that from the evidence on record, the Claimant did not participate in the strike from 3rd to 5th June, 2015 and the Respondent did not uphold the agreement between itself and the union.

43. Reliance was made on the provisions of Article 47(1) of *the Constitution* as well as the decisions in Raymond Cherokewa Mrishi V Civicon Ltd (2014) eKLR and Walter Ogal Anuro V Teachers Service Commission (2013) eKLR to underscore the essence of the right to fair administrative action.

44. Reliance was also made on the provisions of Section 41 of the *Employment Act*, 2007 to urge that the Claimant was not accorded an opportunity to have his witness during the hearing.

45. The decision in Loice Atieno V Kenya Commercial Bank Ltd (2013) eKLR was also relied upon.

46. Reliance was also made on the provisions of Section 43 of the *Employment Act* to urge that the employer must prove the reason(s) for the termination of employment.

Respondent's submissions

47. According to counsel, the issues for determination are;

    i. Whether termination of the Claimant was unlawful.

    ii. Whether terminal dues paid by the Respondent were sufficient.

48. On termination, counsel urged that the Claimant was invited by the Respondent to show cause and attended a hearing on 8th July, 2015.

49. Counsel submitted that the notice to show cause stated the reasons that the Claimant participated in an illegal strike.

50. That the Claimant's defence or explanation at the meeting was to no avail and his employment was terminated on 29th July, 2013.

51. Counsel submitted that the Respondent adhered to the procedure prescribed by law and termination of the Claimant's employment was based on the findings of the investigation.

52. As regards the sufficiency of terminal dues paid, counsel submitted that the dispute before the court on this issue emanated from the union's letter to the Respondent dated 15th December, 2015 by which the union proposed the figures payable to the employees as terminal dues and the Claimant's dues were assessed at Kshs.1,104,892.00 and the Respondent's Counter Proposal of 16th December, 2015 was Kshs.928,742/=.

53. That the Claimant admitted that after the letter, the Union, FKE and the Respondent met and the Respondent agreed to pay the final dues of Kshs.980,918/= to the Claimant and one Isaboke was present when the Claimant was paid his dues of Kshs.692,708/=, with Kshs.100,000/= having been paid in December 2017.

54. That the Claimant received the amount and did not complain to the union or Respondent about his dissatisfaction with the payment and his signature and that of the witness signified consent.

55. The surprisingly, the Claimant did not sue the union if he felt that his interests were not adequately secured.

56. Counsel urged that the terminal dues paid to the Claimant were sufficient and no other sums were payable.

57. Counsel argued that;

    i. the Claimant failed to prove that his termination from employment was unfair,

    ii. the Respondent honoured the agreement concluded on 19th January, 2016,

    iii. the Respondent involved the union and F.K.E in the matter and the instant suit should be dismissed with costs.

Findings and determination

58. After careful consideration of the Pleadings, evidence on record and submissions by counsel, the issues for determination are;

    i. Whether termination of the Claimant's employment was unfair.

    ii. Whether the Claimant was entitled to claim further terminal dues and pursue further claims against the Respondent.

59. As regards termination of the Claimant's employment, while the Claimant's counsel submitted that it was unfair for non-compliance with the provisions of Section 41 and 43 of the *Employment Act*, 2007, the Respondent's counsel urged that it was conducted in accordance with the law.

60. Needless to gainsay, various provisions of the *Employment Act*, 2007 prescribe the architecture on termination of employment from notice, reason(s), prove of reason for termination, burden of proof, summary dismissal and procedure. (See Pius Machafu Isindu V Lavington Security Guards Ltd (2017) eKLR).

61. The provisions of Sections 45 and 41 are the fulcrum in termination of employment.

62. In totality, these provisions are unambiguous that for a termination of employment to pass the fairness test, the employer must establish that he had a valid and fair reason to terminate the employee's employment based on the grounds set forth by Section 45(2) and (b) of the *Employment Act*, 2007 and conducted the termination in accordance with a fair procedure, as aptly captured by Ndolo J. in Walter Ogal Anuro V Teachers Service Commission (Supra) as follows;

> ". . . For a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination."

63. The Court of Appeal expressed similar sentiments in Naima Khamis V Oxford University Press (EA) Ltd (2017) eKLR.

Reason for termination

64. It is not in dispute that the Claimant was along serving employee of the Respondent having been employed in January 2000 and his monthly salary had risen from Kshs.8,000/= to Kshs.48,501.25.

65. It is also common ground that the Respondent's employees were involved in a strike or go-slow from 3rd June, 2015 to 5th June, 2015.

66. Finally, it is also not in contest that the Respondent terminated the Claimant's employment by letter dated 29th July, 2015.

67. The salient issue for determination is whether the Respondent had evidentiary proved that it had a valid and fair reason to terminate the Claimant's employment on that date.

68. Evidence on record reveals that on 3rd June, 2015, the day on which the strike commenced, the Claimant reported to the office but no work was going on. That at one point, he sought from the supervisor and was granted permission to attend to family issues in Kakamega, a parent academic meeting in some school where the son was schooling, and left the workplace, a fact RWI confirmed knowledge of.

69. Neither the Claimant nor the Respondent's witness attested to the actual time when the Claimant left the Respondent's premises or how far the strike had progressed.

70. When the Claimant reported on Monday 8th June, 2015, he was given a letter sending him on compulsory leave for 16 days pending investigation of his role in the illegal strike on 3rd and 4th June, 2015 and when he reported on 26th June as directed, he was given another letter to the effect that investigations by management had shown that the Claimant played a significant role in the illegal strike on 3rd and 4th June, 2015 and was directed to show cause why disciplinary action should not be taken against him by 29th June, 2015 by 4.00 pm.

71. The Claimant did not file his response to the Notice to Show Cause.

72. Neither the Claimant nor the Respondent filed the notice of invitation to the disciplinary hearing. However, the Claimant confirmed that he attended and defended himself and in particular the fact that he was not present that time the strike took place.

73. The termination letter dated 29th July, 2019 stated as follows;

> Salim Ndeweni Samini
>
> ID. NO. 11043739
>
> Re:termination Of Employment Contract
>
> Thank you for having reported at Medivet on the 8th July, 2015 as requested for interview regarding your involvement in the illegal strike of 3rd and 4th June, 2015. After deliberating your response against management's evidence and queries, it has been concluded that your explanations were unsatisfactory and management hereby proceeds to notify you of termination of employment contract with Medivet with immediate effect. You will be notified when calculations of your dues are ready for confirmation and eventual collection.
>
> For Medivet Products Ltd
>
> Signed
>
> A.W. Kiritu

Human Resource Officer"

74. Puzzlingly, while the letter dated 8th June, 2015 sent the Claimant on compulsory leave pending investigation of his role in the events leading to the 2 days strike, the show cause letter dated 25th June, 2015 stated that investigations had been concluded and evidence implicated the Claimant as having "played a very significant role in the illegal strike of 3rd and 4th June . . .", the termination letter is reticent on the actual role the Claimant played and had no reason for termination and RWI confirmed as much on cross-examination.

75. In sum, the notice to show cause did not set out the role the Claimant played in the strike and thus had no specific charges to be responded to.

76. Relatedly, the termination letter had no reason(s) for termination of the Claimant's employment.

77. Although RWI confirmed that an investigation was conducted, he adduced no evidence of the findings and no investigation report was filed in court.

78. In the absence of an investigation report or clear reasons as to why the Respondent terminated the Claimant's employment or minutes of the disciplinary hearing, the court is guided by the provisions of the *Employment Act*, 2007.

79. Section 43(1) of the *Employment Act*, 2007 provides that;

    In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.

80. In the instant suit, the court is satisfied and finds that the Respondent has failed to prove on a balance of probabilities that it had a valid and fair reason to terminate the Claimant's employment on 29th July, 2015.

81. The Respondent counsel's submission that the notice to show cause stated the reason was not borne by facts.

82. It is unclear as to whether the Claimant was accused of having planned the strike or mobilised employees on 3rd June, 2015 or was the mastermind of the strike.

83. The crucial point which the Respondent ignored and on which the issue of termination of employment turns is the role the Claimant played in the strike either before or on 3rd June, 2015 before he left as he was away on 4th and 5th June, 2015.

84. The fact that all employees of the Respondent were on strike on 3rd and 4th as stated by RWI could not avail the Respondent as only 5 employees were eventually dismissed from employment.

Procedure

85. It requires no underscoring that the provisions of Section 41 of the *Employment Act*, 2007 paraphrased by the Claimant's counsel in his submissions prescribe a mandatory and elaborate procedure to be complied with by the employer prior to termination of an employee's employment as was held in Pius Machafu Isindu V Lavington Security Guards Ltd (Supra).

86. The provisions require the Claimant's notification of the reasons for which the employer was considering termination, explanation of the grounds for termination in the presence of a witness,

entitlement of an employee to the presence of a colleague or shop floor representative and hearing and determination of the matter.

87. As adverted to elsewhere in this judgement, neither the Claimant nor Respondent filed the letter of invitation to the disciplinary hearing and although the Claimant attended and defended himself and testified, he faulted the process as he was not accorded a chance to appear with a witness or a colleague of his choice as ordained by law. Was the Claimant informed of the right to be accompanied by a colleague of his choice? Were the charges explained to him at the meeting and what was his response?

88. Similarly, the Respondent did not file minutes of the proceedings as evidence of what transpired.

89. The Respondent adduced no evidence that it gave the Claimant the investigation report to the Claimant for purposes of his defence or at the hearing.

90. While the Claimant's refusal and/or neglect to respond to the notice to show cause is discreditable, the absence of an invitation notice and minutes of the proceedings leaves the court with no option but to hold that the Respondent has failed to demonstrate that it conducted the termination of the Claimant's employment in accordance with a fair procedure.

91. On the absence of a notice of invitation to the hearing, the court is guided by the sentiments of the Court of Appeal in Postal Corporation of Kenya V Andrew K. Tanui (2019) eKLR as follows;

> " In this case, the letter inviting the Respondent to appear before the board was only two lines containing the date and venue. It said nothing about the reasons for such invitation. It said nothing about the Respondent appearing with another employee of his choice. The retort that an employer has no obligation to ask the employee to be accompanied does not avail the appellant because the law requires that such other person be present to hear the grounds of termination, and, if so inclined, make representations thereon. A hearing not so conducted is irregular. At the board meeting, there is no evidence that an explanation of the grounds of termination was made to the Respondent, and if so, in what language."

92. The foregoing sentiments apply on all fours to the facts of the instant suit as there was neither an invitation notice nor minutes of the proceedings.

93. For the foregoing reasons, it is the finding of the court that termination of the Claimant's employment was not conducted in accordance with the procedure prescribed by the provisions of the *Employment Act*, 2007.

94. In sum, it is the finding of the court that the Respondent has failed to prove that termination of the Claimant's employment was substantively justifiable or procedurally fair as by law required.

95. As to whether the Claimant was entitled to claim further terminal dues and pursue further claims against the Respondent, it is common ground that on 3rd June, 2015, the Respondent enlisted the union in the search for a solution and Mr. George Gwako talked to the employees and on the same day the two sides signed a return to work formula but the same appear to have failed as the strike continued as evidence on record reveals.

96. The email from RWI to the union dated 4th June, 2015 at 9.14 am is unambiguous that the strike continued. RWI sought assistance and on 5th June, 2015, a Return to Work formula was executed between Medivet and the union in the presence of a witness from the F.K.E.

97. The agreement reserved the employer's right to send any employee on compulsory leave pending investigations into the strike contrary to the Claimant counsel's submission that the Respondent failed to honour the agreement by sending the Claimant on leave, the right had been reserved.

98. The earlier agreement fell through on 3rd June, 2015.

99. Documentary evidence on record reveals that the Kenya Chemical and Allied Workers Union (KCAAWU) and Federation of Kenya Employers were involved throughout the process.

100. The Claimant testified that he was a member of the union. He also confirmed that the union negotiated the terminal dues payable to the 5 employees including himself.

101. It was his testimony that the union was his representative. Contrary to the assertion that the amount he was paid was determined by the employer, the evidence on record reveals otherwise.

102. Relatedly, the Claimant admitted that the secretary of the union and other union officials signed the documents on record.

103. In summary, by letter dated 30th November, 2015, the Federation of Kenya Employers recommended to the Respondent and the union that the dismissal of the Claimant and his colleagues be reduced to a normal termination for purposes terminal dues and additionally recommended a 2 months salary as compensation and payment be in full and final settlement of all dues.

104. By letter dated 15th December, 2015, the union wrote to the Respondent tabulating the dues payable to the 5 former employees as follows;

Evanson Kiguru Mungai Kshs.432,490/=

Moses Anjia Omumia Moa Kshs.345,103/=

Ali Gitugi Hassan Kshs.418,171/=

Salim Ndeweni Kshs.1,104,892/=

Erick Mutembei Mbaya Kshs.907,571/=

105. The amount included the 2 months salary compensation suggested by the Federation of Kenya Employers.

106. On the following day, the Respondent forwarded its computations to the union by letter dated 16th December, 2015 stating "once verified and accepted, we shall proceed to pay the same after we resume in the new year."

107. The computations are as follows;

Ali Gitugi Hassan Kshs.343,169/=

Erick Mutembei Mbaya Kshs.726,044/=

Evanson Kiguru Mungai Kshs.356,796/=

Moses Anjia Omumia Moa Kshs.280,274/=

Salim Ndeweni Samini Kshs.928,743/=

108. The Respondent's calculations excluded the one (1) month notice pay, pro-rata leave, pro-rata leave travelling allowance and remaining arrears.

109. While the union proposed a meeting on 18th or payment as it had proposed, the Respondent made no proposal other than payment on acceptance, and as a sign of good faith paid Kshs.100,000/= to the 5 former employees on 17th December, 2015.

110. It is unclear as to whether any meeting took place on 18th as suggested by the union.

111. However, the Respondent filed an agreement dated 19th January, 2016 between the union and the Respondent on the mode of payment of terminal dues to the 5 employees and they would be paid one month's salary as notice, service pay, house allowance for days worked, pro-rata leave, wages for days worked, certificate of service and arrears of wages and house allowance subject to payee deductions and wages paid before Christmas 2015.

112. The net amount would be paid in full and final settlement of all claims and be paid on or before 31st January, 2016 as follows;

Ali Gitugi Hassan Kshs.217,711.00

Erick Mutembei Mbaya Kshs.444,609.00

Evanson Kiguru Mungai Kshs.227,250.00

Moses Anjia Omumia Moa Kshs.171,880.00

Salim Ndeweni Samini Kshs.592,708.00

113. The agreement was signed by Mr. George Gwaako from the unions Head Office, Abel Isaboke, Branch Secretary, Alfred Magare and Edward Minda Atunga for the Union and Manish Dodhia and Anthony Waweru Kiritu for the Respondent and witnessed by M.L.W Kariuki of F.K.E and those present signed the agreement.

114. The Claimant acknowledged receipt of Kshs.100,000/= on 17th December, 2015 with Walter Magare as a witness.

115. Finally, the Claimant acknowledged receipt of Kshs.592,708.00 on 1st February, 2016 in the presence of the Branch Secretary of the union, Mr. Abel Isaboke Nyaramba, who also signed the document which stated inter alia

> I Salim Ndeweni Simini holder of ID Card No. 11043739 have received Kshs.592,708.00 being my full and final dues on leaving employment with Medivet Products Ltd. I also confirm that the company had provided me with all the protective gear and clothing and that I was not injured in any way during my employment with Medivet Products Ltd.
>
> Signature
>
> ID NO. 11043739
>
> Date: 1/2/2016
>
> Witness: Abel Isaboke Branch Sec. Kcaawu, Ruiru
>
> Signature: Signed
>
> Date: 1-2-2016.

116. The Claimant denied having been issued with a certificate of service by the Respondent.

117. The instant suit was filed less than 2 months later.

118. The Claimant is praying for Kshs.606,189/= being the balance of dues from the sum of Kshs.1,298,897/= which features nowhere in the documents he has availed in court since the union proposed the sum of Kshs.1,104,892/= as his dues. Even assuming that was the union's proposal, the employer made a counter proposal and the agreement dated 19th January, 2016 would appear to have superceded either of the proposals and the Claimant accepted the same in full and final settlement of the dues.

119. By the foregoing document, which is to all intents and purposes traceable to the agreement between the union and the Respondent made in the presence of a representative from the F.K.E, the parties envisioned that the payment would be in full and final with regard to terminal dues payable to the former employees and the Claimant affirmed the same by signing the document on 1st February, 2016.

120. The Claimant is bound by his signature, hook, line and sinker and the allegation that the amount he received was less than what he expected cannot avail him as was held in Trinity Prime Investment Ltd V Lion of Kenya Insurance Co. Ltd (2015) eKLR.

121. Since the Claimant did not plead misrepresentation, fraud or other vitiating element, the Respondent was fully discharged as far as terminal dues were concerned as the parties intended and expressed themselves.

122. From the document executed by the Claimant on 1st February, 2016, it is clear that the Claimant did not waive his rights to pursue further claims against the Respondent including challenging the termination as is the case herein.

Relief

123. Finally, having found that termination of the Claimant's employment was unfair for want of a valid and fair reason and procedure, I will now proceed to assess the reliefs available to the Claimant.

i. Unpaid balance of dues Kshs.606,189/=

124. As demonstrated above, this claim is unsustainable and is accordingly dismissed.

ii. 4 months salary unpaid during suspension Kshs.194,005/=

125. (The Claimant's counsel amended the prayer herein from 4 months to 2 months Kshs.97,002.50).

126. The Claimant tendered no evidence to substantiate this claim. Neither the undated written statement signed by the Claimant nor the oral evidence adduced in court allege that the Respondent owed the Claimant salary during suspension.

The prayer is disallowed.

iii. General damages

127. The Claimant adduced no shred of evidence to prove entitlement to general damages as the alleged discrimination was neither particularized nor proved.

128. However, since the Respondent has failed to demonstrate that termination of the Claimant's employment passed the fairness test, the Claimant is entitled to compensation in accordance with the provisions of Section 49(1)(c) of the *Employment Act*, 2007 subject to consideration of factors identified by Section 49(4) of the Act.

129. The court has taken into consideration the fact that the Claimant was an employee of the Respondent for a long period of time, about 15 years and 6 months and had no previous warning or misconduct. Second, the Claimant was away for part of 3rd June when the strike commenced and 4th June, 2015 but was present on the day it commenced. Third, the Claimant did not appeal the dismissal either directly to the Respondent or through the union and it is thus unclear whether he wished to continue in the Respondent's employment. Fourth, the employer engaged the union from the commencement of the strike till payment of the terminal dues, a signification of goodwill in having the issue resolved amicably.

130. In the circumstances, the court is satisfied that the equivalent of 3 months salary is fair.

131. In the upshot, judgement is entered for the Claimant against the Respondent as follows;

    a. Equivalent of 3 months gross salary.

    b. Costs of the suit.

    c. Interest at court rates from the date hereof till payment in full.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 31ST DAY OF MAY 2023

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.