



**Ayieko v Kenya Power & Lighting Company Ltd (Cause 1631 of 2017)
[2023] KEELRC 1252 (KLR) (22 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1252 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1631 OF 2017**

JK GAKERI, J

MAY 22, 2023

BETWEEN

JACKTONE ORUKO AYIEKO CLAIMANT

AND

KENYA POWER & LIGHTING COMPANY LTD RESPONDENT

JUDGMENT

1. The Claimant initiated this Claim by a Statement of Claim filed on 22nd August, 2017 alleging that the Respondent had terminated his employment unlawfully.
2. The Claimant avers that he was employed by the Respondent in 1989 and served diligently until November 2014 when his employment was terminated. That as at the date of termination, he was an artisan 3 earning a salary of Kshs.69,936.90 per month.
3. It is the Claimant's case that when his employment was terminated, he was 45 years old and had 15 years to work before retirement at the age of 60.
4. That his duties were in line maintenance and construction but occasionally undertook installation on request by his supervisor.
5. That he had sufficiently responded to the allegation on installation of illegal meters and termination of employment was unwarranted.
6. The Claimant further avers that he was badly burnt while installing a meter due to a short circuit, which left him with unidentified deformity.
7. That the termination of employment was intended to intimidate the Claimant or deny him compensation for the injuries sustained in the accident.
8. That attempts to resolve the issue through the union fell through.



9. The Claimant avers that the suit against the Respondent is for compensation for the injuries and deformity suffered in the course of employment and reinstatement or compensation for the unlawful termination of employment.
10. The Claimant further alleges that his problems with the employer started when he was involved in an accident at the work place which was due to the Respondent's fault as the person who was supposed to switch the line failed to do so which led to the accident.
11. That the Respondent terminated the Claimant's employment to escape its liability to compensate him for the injuries.
12. The Claimant prays for;
 - i. A declaration that termination was illegal and unlawful.
 - ii. Reinstatement back to employment or in the alternative the Respondent do pay the Claimant salary for the remaining period he would have worked till retirement age, one year salary compensation and a certificate of service.
 - iii. Accrued benefits.
 - iv. That the Respondent do pay damages and costs.

Respondent's case

13. In its Memorandum of Reply filed on 9th November, 2017, the Respondent denies that termination of the Claimant's employment was unlawful or without justifiable cause.
14. It is the Respondent's case that investigations revealed that the Claimant had collected electricity meters from the Respondent's store but failed to install them where they were meant to be installed and had not accounted for 132 meters he had signed for and collected from the stores.
15. That the Claimant's duties included installation of meters.
16. The Respondent avers that investigations were conducted, Claimant was taken through a disciplinary hearing, his explanations were considered unsatisfactory, was found negligent and termination of employment as recommended.
17. As regards the alleged injuries, the Respondent avers that the Claimant had medical cover to cater for hospital bills and the Claimant had not lodged a request for compensation for any deformity.
18. That the Claimant had several disciplinary citations and was neither diligent nor dedicated and due process was observed in the termination of employment.
19. The Respondent avers that the Claimant did not account for meters issued to him for installation.

Claimant's evidence

20. On cross-examination, the Claimant confirmed that he used to install meters and replace faulty ones.
21. The Claimant testified that the accident occurred in February 2013 but had not provided evidence of the claim for compensation, did apply for compensation and the employer paid the hospital bill.
22. The witness confirmed that he received three notices to show cause in April, May 2014 and August 2014, responded, was invited for a disciplinary hearing and attended on 1st October, 2014 and was notified of the charges.



23. That the invitation letter identified the charges and notified him the right to have a witness and he was accompanied by a union official, he testified and was heard.
24. It was his testimony that he had 10 previous warnings and disciplinary issues.
25. The Claimant confirmed at the hearing that he collected some meters assigned to him.
26. The witness admitted that he had at one time given his car keys to a colleague to pick meters from the car.
27. That he was unaware that the Respondent incurred loss on account of his negligence.
28. The witness stated that he was paid one (1) month's salary and accrued leave days.
29. It was his testimony that "accrued benefits" referred to the salary he would have earned till retirement.
30. On re-examination, the witness stated that the supervisor had given him authority to delegate collection of meters from his motor vehicle.

Respondent's evidence

31. In his examination-in-chief, RWI testified that as at the date of termination, the Claimant had not accounted for 7 meters he had signed for and collected from the stores.
32. On cross-examination, the witness confirmed that the Claimant was invited for a disciplinary hearing on 30th September, 2014 and the hearing took place on 1st October, 2014 having received the letter in the morning.
33. That the lost meters were not part of the meters reported to the police.
34. That the meters referred to at page 24 of the Respondent's bundle of documents related to another matter.
35. The witness testified that investigations revealed that the Claimant had activated some meters and security had identified 4 meters which he had collected.
36. The witness confirmed that people used to pick meters on pro rata basis but an employee could not pick on behalf of another and the person collecting he meter had to sign for it.
37. That he had no record of the customers mentioned and it would have been easy to contact them. That the person who installed meters did not sign and the Claimant was not working in activation of meters.
38. The witness confirmed that he had no document of the Claimant's job description.
39. That the charge against the Claimant was breach of confidentiality, a concept the witness was unable to explain.
40. On re-examination, the witness testified that the Claimant had not complained about the notice to attend the hearing.
41. That the Claimant did not know where the meters were installed.

Claimant's submissions

42. Counsel isolated two issues for determination;
 - i. Whether the Claimant installed the alleged meters.



- ii. Whether termination of the Claimant's employment was legal and lawful.
43. On installation of meters, counsel submitted that while the invitation letters accused the Claimant for breach of confidentiality, the termination letter stated that the termination was occasioned by illegal installation of meters at Kamulu/Joska/Nakuru and Kilimani.
44. Counsel urged that the Claimant was not accorded a chance to prepare for his case.
45. That the Respondent's letters to the Claimant on negligence of duty were satisfactorily responded to.
46. Counsel urged that termination date was backdated to 6th November, 2014 yet the letter was dated 12th November, 2014.
47. The decision in *Geoffrey Sadat Otana V Equity Bank Ltd (2020) eKLR* was relied upon to buttress the submission.
48. Counsel submitted that none of the customers mentioned identified the Claimant as the one who installed the meters yet they were easy to find.
49. It was counsel's submission that the Respondent was on a witch hunt by accusing the Claimant that he delayed CRM's jobs on 7th December, 2013 when he was on leave and a marital dispute was the subject matter of disciplinary.
50. That because the meters were collected by his colleagues using his number, he could not be held liable.
51. Counsel relied on the provisions of Section 43 of the *Employment Act* to submit that the Respondent had no proof that the Claimant had installed the alleged meters and the Claimant was not involved in meter activation and was not arrested even after investigation.
52. Counsel urged that the Respondent had no valid reason to terminate the Claimant's employment as required by Section 45 of the *Employment Act, 2007*.
53. Reliance was made on the decisions in *Co-operative Bank of Kenya Ltd V Banking, Insurance and Finance Union (2017) eKLR* and *Muthaiga Country Club V Kudheha Workers (2017) eKLR* on the burden of proof of the employer under Section 43(1) and 47(5) of the *Employment Act, 2007*.
54. Counsel submitted that the Claimant had discharged the burden of proof but the Respondent had not and the termination of the Claimant's employment was unfair.
55. As regards entitlement to the prayers sought, counsel urged that the Claimant served the Respondent for a long time about 25 years and had proved his case.

Respondent's submissions

56. Counsel for the Respondent identified two issues for determination, namely; whether termination of the Claimant's employment was wrongful, unfair and unlawful and entitlement to the reliefs sought.
57. As regards termination, reliance was made on the provisions of Section 45 of the *Employment Act, 2007* to urge that the Claimant was negligent in the performance of his duties and failed to comply with laid down procedures by collecting meters that were illegally installed, as he admitted.
58. That it was the Claimant's duty to keep records of the meters he had collected and distributed to his colleagues and account for them.



59. Counsel relied on the provisions of Section 44 of the *Employment Act* and the sentiments of Court in *Linus Barasa Odhiambo V Wells Fargo Ltd* (2012) eKLR to urge that the Claimant had fundamentally breached his obligations under the contract of employment and summary dismissal was merited.
60. On procedure, counsel submitted that the Claimant had not contested the short notice given by the Respondent for the hearing and only raised it in court or allege that he was unaware of the charges. In addition, the Claimant admitted having received the various notices to show cause.
61. Counsel submitted that the Claimant was notified of the right to be accompanied by another employee and appeared with a union official and signed the minutes of the disciplinary committee meeting.
62. The decisions in *Dairus Kiseu Mwamburi V Co-operative Bank Ltd* (2021) eKLR and *Kenya Union of Commercial Foods and Allied Workers V Meru North Farmers Sacco Ltd* (2013) eKLR were relied upon to urge that the provisions of Section 41 were complied with.
63. As regards the reliefs sought, counsel submitted that the Claimant was not entitled to the reliefs sought and if the court found that the termination was unfair, the relief available would fall under the confines of Section 49 of the *Employment Act*, 2007.
64. As regards reinstatement, counsel submitted that it was too late as the remedy can only be decreed within 3 years from the date of termination and the Claimant left employment in November 2014.
65. Reliance was made on the decisions in *Idris Omar Abdi V Garissa Water & Sewerage Co. Ltd* (2021) eKLR and *D.K. Njagi Marete V Teachers Service Commission* (2013) eKLR on the role of remedies in employment matters.
66. Counsel urged that the prayer for one (1) year compensation and damages was a duplication.
67. Counsel urged that awarding the Claimant nominal damages of Kshs.100,000/= would be fair in light of the requirements of Section 49(4) of the *Employment Act*, 2007.
68. Reliance was also made on the decisions in *Kinakie Co-operative Society Ltd V Green Hotel Ltd* (1988) KLR 242 and *Standard Group Ltd V Jenny Luesby* (2018) eKLR to urge that nominal damages would be sufficient were the court to find the Respondent culpable for unlawful termination.
69. Counsel urged the court to dismiss the suit as was the case in *Richard Andai Ahongo V Kenya Power & Lighting Co. Ltd* (2022) eKLR.

Findings and determination

70. The issues for determination are;
 - i. Whether termination of the Claimant's employment was fair.
 - ii. Whether the Claimant is entitled to the reliefs sought.
71. As to whether termination of the Claimant's employment was fair, the home port are the relevant provisions of the *Employment Act*, 2007 as applied by courts.
72. The provisions of Sections 35, 40, 41, 43, 44, 45 and 47(5) of the Act prescribe the architecture of termination of employment contracts as regards notice, redundancy, procedure, reason(s) for termination, summary dismissal, proof of valid and fair reason and fair procedure and the burden of proof of the employer and employee.



73. Section 45(2) of the Act provides that for a termination of employment to pass the fairness test, the employer is required to prove that;
- i. It had a fair and valid reason to terminate the employee's employment.
 - ii. The reason related to the employee's conduct, capacity or compatibility or operational requirements of the employer.
 - iii. The employment was terminated in accordance with fair procedure.
74. Section 41 of the *Employment Act* prescribe the procedural precepts which an employer must comply with prior to termination of employment. The foregoing provisions was adverted to by the Court of Appeal in *Pius Machafu Isindu V Lavington Security Guards Ltd* (2017) eKLR.
75. These provisions are unambiguous that for a termination of employment to pass the fairness test, it must be substantively justifiable and procedural fair as aptly captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR and the Court of Appeal decision in *Naima Khamis V Oxford University Press (EA) Ltd* (2017) eKLR.
76. I will now proceed to apply the foregoing provisions and propositions of law to the facts of the instant suit.

Reason for termination

77. While the Claimant's counsel submitted that the Respondent had not proved that it had a valid reason to terminate the Claimant's employment, the Respondent's counsel urged that the Claimant had performed his duties negligently in that he collected meters from the Respondent's store, signed for them but could not account for some of them.
78. According to the counsel, he confirmed at the hearing that he had indeed collected some meters from the store and had occasionally given his colleagues his car keys to collect meters from the car ostensibly because he had authority to delegate, given by the supervisor though he had no evidence of authority to delegate.
79. The Claimant confirmed that he kept records of the meters picked but had not filed the same.
80. RWI on the other hand confirmed that Claimant was engaged as an artisan in construction, maintenance and meter installation. The Claimant too admitted that he installed meters.
81. The evidence adduced at the hearing reveal that the Claimant admitted having collected meters but could not explain who picked them from his motor vehicle and where they ended up and in his defence he requested for forgiveness and alleged that he was being used because he was illiterate.
82. It was found that the Claimant could not account for 7 meters out of the 136 he had collected and signed for. He had no record on how the meters were distributed from the store.
83. The Claimant signed the minutes on 21st October, 2014.
84. The committee also found that the Claimant had no profile for activation of meters in the system.
85. Records reveal that as early as 21st March, 2014, the Regional Security Officer, Nairobi North had written to the Senior Human Resources and Administration Officer, Nairobi North on the theft of 20 pre-paid meters for the Ruaraka Store on 26th January, 2014, a total of 153 meters had been stolen between 2013 and 2014 and the matter was reported to the police.



86. The report revealed that the Claimant was at the store on 26th January, 2014 which was on a Sunday. He denied that the Meters Nos. 14105440763, 14105440771, 1410544073 and No. 1405440748 were in the store.
87. That the Claimant activated Meter No. 14105440755 on 29th January, 2014.
88. The report recommended several charges including disciplinary action against several persons including the Claimant as he was in the store on the date the meters were stolen.
89. The Claimant was implicated in the theft of the meters.
90. In his undated response to the report, the Claimant stated that on 24th January, 2014, he was to collect 15 meters including 14105440755 and the same was posted under his name but only collected 6 meters as the others were not issued to him as they allegedly could not be traced.
91. He denied having activated any meter as he did not have the know how which was true.
92. From the evidence on record, it is unclear as to what action the Claimant took to correct the records in the system that he had collected 6 as opposed to 15 meters on 26th January, 2014.
93. Equally, by letter dated 21st February, 2014, the Chief Engineer Customer Service demanded an explanation from the Claimant why he had delayed CRMs jobs on 7th December, 2013 and 28th January, 2014.
94. The Claimant testified in court that he was on leave from 25th November, 2013 to 20th January, 2014 and worked on 28th January, 2014 as records revealed.
95. By letter dated 7th April, 2014, the Claimant was called upon to explain how he had illegally installed Meters No. 14105900816 and No. 14104384814 in Murunyu Location and Wanyoro Location respectively which Management characterised as negligence and failure to follow established procedures.
96. The Claimant responded in an undated letter indicating that the places were unknown to him and he had written a statement on it and could neither deny nor agree that he collected the meters from the store as the system indicated.
97. He denied having installed the meters as alleged.
98. The Claimant admitted that the meters were collected in circumstances known to the supervisor due to work load and target pressure and prayed that the same should not be treated as negligent of duty as he could not understand how the meters found their way to Nakuru County.
99. Similarly, by letter dated May 2nd 2014, the Chief Engineer called upon the Claimant to explain the activation of Meter No. 14105440755 reportedly missing from the store which the management viewed as negligence.
100. The Claimant did not attach his response to this letter which had accorded him 72 hours to show cause.
101. By letter dated 19th May, 2014, the Claimant was suspended from employment with pay as per the Collective Bargaining Agreement. The letter relied on previous letters dated 21st February, 2014, 7th April, 2014 and 2nd May, 2014.
102. Relatedly, by letter dated 31st July, 2014, the Chief Engineer demanded an explanation from the Claimant within 72 hours why Meter No. 14106168488 issued to him on 3rd March, 2014 for



- installation in Githunguri Area was installed at Ndemi Road, Kilimani and the post-paid meter removed and stored with a debt of Kshs.103,000/= which management view as neglect of duty.
103. The Claimant responded by letter dated 4th August, 2014 denying the allegation and the man in question Mr. Danji Patel could not recognize the Claimant.
 104. The Claimant however could neither deny nor accept that the system indicated that he had picked the meter from the store.
 105. The letter of termination of employment dated 12th November, 2014 stated as follows;

“Further to our explanation letter dated 7th April, 2014, your response and the disciplinary hearing held on 1st October, 2014 in regard to illegal installation of meters at Kamulu/Joska/ Nakuru and Kilimani. Your explanation was not acceptable on the following ground:-You confirmed to have collected the meters from the store, which were illegally installed.”
 106. The letter tabulated the monies due to the Claimant.
 107. The letter backdated the termination to 6th November, 2014 but the Respondent indicated it would pay the salary due upto and including 15th November, 2014.
 108. Finally, although the notice of invitation to the hearing accused the Claimant of breach of confidentiality/code of conduct, the Claimant was well aware of the allegations against him as communicated in countless letters from February 2014 to July 2014 and had responded to them.
 109. Indeed, minutes of the disciplinary proceedings are clear that the allegations read out to the Claimant related to installation of “meters illegally in different areas.”
 110. The union officials raised objection on the invitation letter, suspension and presence of Ruth of Human Resource, but after consultations, the meeting proceeded.
 111. From the foregoing, it is clear that as regards the meters installed in Wanyoro and Murunyu in Nakuru and Ndemi Road, Kilimani, the Claimant admitted that he collected the meters but could not tell how they got to such places.
 112. The union’s defence of systems failure in that employees could pick meters from the store was to no avail as the Claimant confirmed that he had no record of the meters collected from his vehicle after he gave out his car keys.
 113. Having collected the meters from the store, it behoved the Claimant to have a record as to who picked which meter and the place it was to be installed for accountability.
 114. From the evidence on record, the Claimant appear to have overtrusted his colleagues whose motives he may have been unaware of to his detriment.
 115. Since the meters were collected from the store for installation and the Claimant had no record as to where they were installed, he could not escape responsibility for neglect of duty as he by default or design facilitated an illegal connections.
 116. Other than the response to the letter dated 21st February, 2014 which appear to have satisfactorily explained the show cause letter, the letters dated 7th April, 2014 and 2nd May, 2014 and 31st July, 2014 do not appear to have been explained satisfactorily.
 117. The last three letters related to the Claimant’s handling of meters having collected them from the store. In his letters of 3rd April, 2014, 9th April, 2013 and another undated one, the Claimant did not deny



having collected the meters but blamed the manner in which meters were collected from the store where one person could collect for the team. In his testimony, he stated that he kept records but had not filed any. Moreover, the alleged failure of the system was not supported by evidence.

118. Section 43(2) of the *Employment Act*, 2007 provides that;

The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.

119. Based on the accusations of negligence made against the Claimant from February 2014 to July 2014, and the evidence at the hearing, it is the finding of the court that the Respondent has on a balance of probabilities demonstrated that it had a valid and fair reason to terminate the Claimant's employment.

Procedure

120. Needless to emphasize, the procedure prescribed by Section 41 of the *Employment Act* is mandatory as held by the Court of Appeal in *Pius Machafu Isindu V Lavington Security Guards Ltd (Supra)* as follows;

“A mandatory and elaborate process is then set up under Section 41 requiring notification and hearing before termination . . .”

121. In *Postal Corporation of Kenya V Andrew K. Tanui (2019) eKLR*, the Court of Appeal catalogued the precepts of Section 41 of the *Employment Act*, 2007 as;

- i. an explanation of the grounds of termination in a language understood by the employee;
- ii. the reason for which the employer is considering termination;
- iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- iv. hearing and considering any representations made by the employee and the person chosen by the employee.”

122. It is not in dispute that in this case the invitation notice to the disciplinary hearing was received on 30th September, 2014 and the hearing took place on 1st October, 2014 as the Claimant confirmed on re-examination, which accorded him less than 24 hours to prepare an effective defense to the case before him and identify a witness and notify the Respondent who that person would be.

123. Strangely, the Respondent did not avail a copy of its Human Resource Policy and Procedure Manual to demonstrate it complied with its own internal procedures.

124. It requires no gainsaying that previous notices to the Claimant to show cause to the Chief Engineer, a departmental matter, accorded the Claimant 72 hours to respond.

125. Bearing in mind that the invitation notice neither particularized the allegations facing the Claimant nor the evidence the Respondent would rely on in prosecuting its case, it was incumbent upon the Respondent to accord the Claimant sufficient time to prepare a defence.

126. The Respondent had investigation reports at its disposal which it did not avail to the Claimant.

127. The furnishing of evidence to the Claimant and sufficient time was critical as the allegations related to the installation of meters of different locations and the meters had been collected at different times.



The Nakuru, Kamulu/Joska and Kilimani meters were different sets of allegations some of which the Claimant had responded to.

128. The minutes on record make no reference to Claimant's responses and why they were deemed unsatisfactory.
129. The essence of avilment of reasonable time to the employee to prepare for a disciplinary hearing is now well entrenched in the emerging jurisprudence on this aspect.
130. The court is guided by the sentiments of Ndolo J. in *Rebecca Ann Maina & 2 others V Jomo Kenyatta University of Agriculture and Technology* (2014) eKLR as follows;

“I agree with counsel for the Respondent that internal disciplinary proceedings are non-judicial in nature. However, in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defense . . .”

131. Similarly, in *Benjamin Mwendwa Nduati & 4 others V East African Portland Cement Company Ltd* (2016) eKLR, Wasilwa J. held as follows;

“I do agree with the Claimants. Reasonable time should have been accorded to them to prepare for the defense and be ready to defend themselves and in this case reasonable time would in my view be at least 7 days. This would in any case include details of the charges against the Claimants which details were not provided.”

132. In that case, the Claimant was interdicted on 26th April, 2013 and for a fresh interdiction by letter dated 8th May, 2013 and invited for a disciplinary hearing on 9th May, 2013 by letter dated 7th May, 2013.
133. In the instant suit, the Claimant was accorded a one day notice and neither the specific allegations were particularised nor the materials to be relied upon by the Respondent availed to the Claimant.
134. For the foregoing reasons, the court is satisfied and finds that the Respondent has failed to demonstrate that it accorded the Claimant a fair hearing on 1st October, 2014.
135. Having so found, I now proceed to determine the appropriate relief.

(a) Declaration

136. Having found that termination of the Claimant's employment was unfair for want of procedural propriety, a declaration that termination of the Claimant's employment was unfair is merited.

(b) Reinstatement

137. This is one of the reliefs provided by Section 49 of the *Employment Act*, 2007.
138. Section 49(3)(a) of the *Employment Act*, 2007 read with Section 12(3)(vii) of the *Employment and Labour Relations Court Act*, 2011 provides for the remedy of reinstatement which is discretionary.
139. However, under Section 12(3)(vii) of the *Employment and Labour Relations Court Act*, 2007, the remedy is only available within 3 years from the date of termination of employment or dismissal and since the Claimant's employment was terminated on 6th November, 2014, over 8 years ago and the remedy is for that reason alone unavailable.



(c) Salary for the remaining period till retirement

140. The Claimant adduced no evidence of entitlement to salary till retirement. This is a claim for anticipatory earnings and has no anchorage in law as held by the Court of Appeal in *D.K. Njagi Marete V Teachers Service Commission (2019) eKLR*.

The prayer is declined.

(d) One year salary compensation

141. Having found that termination of the Claimant's employment was unfair, the Claimant is entitled to the relief provided by Section 49(1)(c) of the *Employment Act, 2007*.

142. In determining the quantum of compensation, the court is enjoined to consider the relevant facts enumerated in Section 49(4) of the Act.

143. In this case, the court has considered the following;

- i. The Claimant was an employee of the Respondent from 1st August, 1989 to 6th November, 2014, a period of more than 25 years which is undoubtedly a long time.
- ii. The Claimant wished to continue in employment as exemplified by the prayer for reinstatement.
- iii. The Claimant substantially contributed to the termination of employment.
- iv. The Claimant admitted that he had about 10 previous warning letters touching on submission of wrong accounts, neglect of duty, absenteeism, among others.
- v. The Claimant did not appeal the decision to terminate him from employment.

144. In light of the foregoing, the court is persuaded that the equivalent of 2 months salary is fair.

(e) Certificate of service

145. The Claimant is entitled to a certificate of service by virtue of Section 51 of the *Employment Act, 2007*.

(f) Accrued benefits

146. This prayer lacks the necessary particulars. The Claimant testified that it meant payment till retirement.

The prayer is declined for want of particulars.

Conclusion

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

- a. Declaration that termination of the Claimant's employment was unfair.
- b. Equivalent of 2 months salary.
- c. Certificate of service.
- d. Costs of the claim.

It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22ND 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.

DR. JACOB GAKERI

JUDGE

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