



**Olake v Kituo Cha Sheria (Legal Advice Centre) (Cause 22 of 2020)  
[2023] KEELRC 1158 (KLR) (16 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1158 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 22 OF 2020**

**JK GAKERI, J**

**MAY 16, 2023**

**BETWEEN**

**ALLAN OGOLLAH OLAKE ..... CLAIMANT**

**AND**

**KITUO CHA SHERIA (LEGAL ADVICE CENTRE) ..... RESPONDENT**

**JUDGMENT**

1. The Claimant initiated this claim by a Memorandum of Claim filed on January 20, 2020.
2. The Claimant alleges that termination of his employment by the Respondent was unfair, malicious and discriminatory.
3. The Claimant avers that he was employed by the Respondent on March 24, 2017 as a Project Accountant at Kshs 105,000/= per month and served the Respondent diligently until September 9, 2019 when he was summarily dismissed.
4. The Claimant avers that the Respondent did not issue a job description, was not paid for 6 days worked from March 24, 2017 to March 31, 2017, was underpaid for 9 months (March 2017 to December 2019), unpaid house allowance as Finance Manager in December 2017, January 2018 and March 2018, salary for July 2019, August 2019 and 6 days short fall in September 2019, accrued leave pay, leave travelling allowance, one month's notice, house allowance and 12 months compensation, all totalling Kshs 2,850,000/=.
5. It is the Claimant's case that during his employment, he was discriminated by being;
  - i. denied medical cover in 2017 and dependants in 2018 and 2019.
  - ii. denied registration in the pension scheme.
  - iii. denied attendance of staff team building.



- iv. denied salary while on suspension.
- v. denied acting allowance in December 2017 and March 2018.
- vi. denied opportunity to go on leave.
6. The Claimant responded to the statement of response and Counter-claim, averring that he was employed as an Accountant all along. He denied having misappropriated funds and had no pending imprest. That he could not prosecute his appeal as he had no salary.
7. The Claimant admitted having been surcharged the sum of Kshs 92,825/=.
8. Finally, the Claimant denies owing the Respondent any monies and prayed for dismissal of the Counter-claim.
9. The Claimant prays for;
  - a. A declaration that his dismissal was unfair, malicious and discriminatory.
  - b. A declaration that he was unfairly discriminated at the work place.
  - c. Special damages of Kshs 2,850,000/=.
  - d. General damages for discrimination Kshs 1,600,000/=
  - e. Interest on the above.
  - f. Costs of the suit.
  - g. Certificate of service.
  - h. Any other relief that the court may deem fit to grant.

### **Respondent's Case**

10. In its statement of response and Counter-claim/set off, the Respondent denies having employed the Claimant on March 24, 2017 at the salary alleged and avers that it employed him on January 1, 2018 as a Project Accountant at Kshs 105,000/= before which he was a Consultant handling accounting issues for the period October 1, 2017 to December 31, 2017.
11. The Respondent denies having summarily dismissed the Claimant or discriminated him.
12. It is the Respondent's case that the Claimant did not work from March 24, 2017 and March 31, 2017.
13. The Respondent denies owing the Claimant any monies as unpaid salary or any allowance and avers that it paid a consolidated salary and the dismissal was based on a good reason and was fair.
14. That Claimant was issued with and had a job description.
15. That the Claimant was not on medical cover prior to January 1, 2018 as he was a Consultant and thereafter had not supplied details of his wife and children.
16. That the Respondent operated a Provident Fund Scheme as opposed to pension for which the Claimant did not enrol and did not raise the issue and was not denied the right to participate in a team building as he was working on an institutional audit report for the upcoming Annual General Meeting (AGM) and chose to finalize the report.



17. That the Claimant was suspended from duty without pay as per the Respondent's Manual and Polices on unaccounted for imprest claims and comingling of funds amounting to Kshs 263,150.00.
18. That the Claimant was accorded the right to appeal but did not prosecute the appeal after filing it.
19. That he did not apply for leave for the entire duration.
20. That the Respondent shared the Auditor's recommendation report prior to and during the disciplinary hearing contrary to the Claimant's assertions.
21. That the Claimant was appraised and had no performance challenges but the manner in which he carried out his work had challenges, a hard and soft copies of the Respondent's Manual were provided and breaches that led to termination of employment had been availed before the hearing and he was given an opportunity to explain himself orally and in writing before and after the hearing and was given a chance to call witnesses and minutes of the hearing were shared.
22. That the Claimant acquiesced to the re-scheduling of the hearing to the afternoon and he failed to appear for the appeal even after he had been accommodated.
23. In its Counter-claim, the Respondent claims the following;
  - i. Unauthorised payment, Kshs 225,650/=
  - ii. Pending imprest, Kshs 35,700/=
  - iii. Lost funds and unaccounted for imprest Kshs 263,150/=.
24. The Respondent avers that the Claimant was negligent in that he made irregular and unauthorised payments which he admitted.
25. That the Claimant carried out his duties carelessly and negligently and the Respondent lost Kshs 263,150.00.
26. The Respondent prays for;
  - a. Reimbursement of Kshs 263,150.00 as salary in lieu of notice and imprest.
  - b. General damages.
  - c. Costs of the Counter-claim.
  - d. Interest.
  - e. Any other relief the court may deem fit to grant.

#### **Claimant's Response to Counter-claim**

27. In his reply dated October 13, 2020, the Claimant denied having made irregular or unauthorised payments.
28. The Claimant avers that the Respondent surcharged him the sum of Kshs 92,825/= without any due process and the Respondent suffered no loss of funds and he had no unaccounted for imprest.
29. The Claimant prayed for dismissal of the Counter-Claim with costs.



### **Claimant's evidence**

30. On cross-examination, the witness confirmed that although he appealed against the decision to terminate his employment, he did not receive a response and did not attend the appeal hearing as he had no cash.
31. The witness confirmed that he could not attend the appeal hearing on September 30, 2019 and was unreachable and was accommodated and the hearing postponed to October 4, 2019 when again he did not attend though the board was ready to hear him.
32. That his employment was terminated effective September 5, 2019 and the letter outlined the reasons for the termination which he identified in court.
33. As regards the alleged discrimination, the Claimant stated that his 3<sup>rd</sup> child was excluded from medical cover while the other two were covered but admitted that he had not included the 3<sup>rd</sup> child as next of kin and had no document to show that he had included his name.
34. Second, that he was not included in the provident fund having applied through the Finance Manager but had no evidence of having applied for the voluntary scheme.
35. That he was not issued with a certificate of service and could thus not secure employment and had no Practicing Certificate.
36. The witness testified that he was suspended on July 11, 2019 and was not paid after termination of employment.
37. The witness confirmed that he joined the Respondent from March 24, 2017 as an employee under a verbal agreement with Madam Angote and had attached attendance records as evidence and the Respondent did not withhold tax on his salary.

### **Respondent's evidence**

38. RWI, Anette Mbogo testified that she joined the Respondent on October 1, 2009 and that the Claimant was employed by the Respondent on October 1, 2017. The witness confirmed that the email dated December 17, 2017 from one Sylvia Owuor, the Finance and Administration Co-ordinator contained handover notes and the Claimant was copied.
39. That a document filed by the Claimant entitled "Current list of staff" indicated that the Claimant was employed on March 24, 2017.
40. That Sylvia Owuor was in charge of Human Resource.
41. It was her testimony an email dated March 24, 2017 was copied to the Claimant who, with another employee would be in charge of the tasks relating to the French Embassy as well as the Swiss Embassy.
42. That the documents emailed were part of the ordinary operations of the Respondent.
43. The witness testified that the Claimant was engaged as a consultant but could not confirm that she had filed a consultancy agreement.
44. The witness however confirmed that the Claimant used to clock-in at 8.00 am and leave at 5.00 pm.
45. The witness could not confirm how it paid the Claimant's dues.
46. RWI testified that the audit report was shared with the Claimant and he responded.



47. It was her testimony that the Claimant's conduct was a breach of discipline.
48. The witness confirmed that the Claimant was not paid any salary during suspension and the Respondent's manual was silent on the issue.
49. The witness testified that the Claimant was invited for a disciplinary hearing, notified of the charges i.e misappropriation of funds and insubordination and had been given all the documents used at the disciplinary hearing.
50. That the Claimant's appeal against termination was determined in his absence and the decision was communicated, but had no evidence to prove the fact of communication.
51. That the minutes of the disciplinary hearing were not shared before the appeal was filed.
52. It was her testimony that the Claimant's employment was terminated on the grounds of misappropriation and mismanagement of funds and the Respondent lost Kshs 261,350/=.
53. The witness explained the process of an officer proceeding to the field from concept paper to disbursement of funds.
54. That the Claimant handled the payments in question.
55. The witness confirmed that the report prepared by the Finance Co-ordinator did not show that the Claimant owed the Respondent any money.
56. The witness confirmed that the outcome of the disciplinary hearing on record was authentic.
57. On re-examination, the witness testified that on September 4, 2019, the Chair of the Board was Justus Munyithia and some of the persons identified as directors had ceased to hold office and it was a transition period.
58. That the Claimant was the accountant in charge of the UNHCR Project.
59. That the Claimant had not applied to join the provident fund which was voluntary and not all staff were members.
60. That the Claimant was required to file documents of his 3<sup>rd</sup> child but did not.
61. The witness testified that termination of the Claimant's employment was procedural as he defended himself. That the Claimant breached his professional duty as an accountant in dealing with donor funds and was suspended on the basis of the audit report prepared by Stanley Gitau & Company, an independent audit firm, and addressed internal controls, cash and bank reconciliation, petty cash and cheque payments.
62. That one Philip Musamia who was supposed to receive some funds did not receive the entire amount.
63. The witness testified that the Claimant was employed on January 1, 2018 as he was previously a consultant.
64. RWII, Mr. Charles Gitau, testified that he was a Practicing Auditor/Accountant, Certificate No. 723 and carried on business in the name and style Carr Stanyer Gitau & Co. and had practiced since July 1979.
65. The witness stated that he was specialized in auditing, forensic, tax matters and accountancy and the Respondent had been his client for about 7 years and had been invited to carry out an investigation to



- ascertain whether payments were authorised and staff policies were being adhered to from September 1, 2018 to April 16, 2019.
66. That a review of the petty cash, payment vouchers and reconciliation revealed unauthorised cash payments and mix up of petty cash, staff creditors with balances and staff debtors. The latter ought to be paid within 7 days of reporting back.
  67. He testified that the audit revealed that there was no Master Roll of casual employees which could encourage ghost workers or working for shorter hours but be paid more, payment of regular suppliers in cash as opposed to cheques and uncleared payments.
  68. The witness testified that he met the Claimant when he was employed by the Respondent as a Consultant in 2017 as there was a position to be filled and another employee had left.
  69. That the Claimant was as good as any other accountant.
  70. RWII confirmed that the audit revealed that the sum of Kshs 225,650/= was diverted from the Rapid Project to petty cash and payments were made without authority contrary to the Code of Ethics for Accountants.
  71. That the Kshs 225,650/= was misappropriated and the project proceed and the Respondent had to repay the donor.
  72. That the Claimant's response to the report was an attempt to wriggle out of the mess he created and had no supportive evidence.
  73. That the borrowing to replenish petty cash without authority was poor planning.
  74. It was his testimony that donors prefer their monies being managed separately.
  75. That a cheque of Kshs 47,000/= was not authorised.
  76. On cross-examination, the witness testified that the Claimant required authority of the superior who was the Finance Manager. He could not however, confirm whether the diversion of funds occasioned loss.
  77. It was his testimony that payments made to Mr. Makario between November 23, 2018 to November 4, 2018 were not irregular but the petty cash was being abused.
  78. That he had not attached the Respondent's financial policy.
  79. On re-examination, the witness testified that the supervisor was not the appropriate authority as the two were working in cohort and the Claimant did not raise the issue of internal systems with a higher authority.
  80. According to the witness, only the Claimant could explain where the monies diverted to petty cash came from.
  81. That staff members had a debt of Kshs 570,414/= and no effort was being made to recover the same and it had not been reported to the management.

### **Claimant's submissions**

82. According to the Claimant, the issues that commend themselves for determination are, whether;



- i. There was an employment relationship between the parties from March 24, 2017 to December 31, 2017 as well as entitlement to pro-rated salary, medical cover and attendance of team building.
  - ii. The Claimant was discriminated.
  - iii. The Claimant acted as Finance and Administration Co-ordinator from December 8, 2017 to March 28, 2018 and entitlement to acting allowance.
  - iv. The Claimant was subjected to a lawful process by a bonafide board of directors.
  - v. The termination was based on valid and fair reason, due process.
  - vi. The Respondent's Verifying Affidavit was fake and basis of Counter-Claim costs of the Claimant and the reliefs sought.
83. On the employment status from March 24<sup>th</sup> 2017, the Claimant submitted that he was employed by the Respondent on that date as evidenced by the communication on record was handed over duties and no payment was made for 6 days in March 2017.
  84. The Claimant submitted that the Respondent did not controvert his evidence that payments made from May 2017 to December 18, 2017 were salary payments as required by the Respondent's manual and the work day was Monday to Friday as attendance records showed.
  85. That neither certificate of withholding tax was filed nor the Claimant's invoice for payment.
  86. Reliance was made on the decision in *Abednego Ngwabe Were v East African Safari Air Express Ltd* (2020) eKLR to urge that the Respondent had not demonstrated that the Claimant was engaged as a Consultant.
  87. As regards discrimination, the Claimant submitted that his appeal against half-salary while on suspension was never determined yet his supervisor who was suspended in April 2019 received full salary for 3 months and whose letter had no clause on half-salary yet there was no defined policy on the same as RWI confirmed in evidence.
  88. That he was treated differently from a female colleague, one Louisa Burudi who was paid fully while on suspension and was thus discriminated on the ground of sex.
  89. That a notice to show cause was necessary before suspension as per the Respondent's policy.
  90. That the Claimant requested for a copy of the minutes of the hearing and they were not supplied or filed in court and the court had no basis on to ascertain the fairness of the process. That he was kept waiting for 5 hours hence the Respondent's reluctance to file the minutes.
  91. The Claimant submitted that he was discriminated on medical cover in 2017 and one dependant in 2018 and 2019.
  92. That he was discriminated on attendance of team building by staff.
  93. On acting, the Claimant relied on the email from the Executive Director acknowledging the acting period and urged the court to hold that he acted from December 7, 2017 to March 26, 2018. That the non-payment was discriminatory as others were paid, such as Executive Director, John Mwariri and Faith Ochieng in 2018 and the Respondent had no policy on acting allowance.
  94. The decision in *Janine Buss v Gems Cambridge International School Ltd* (2016) eKLR was relied upon in support of the submission.



95. Further, the Claimant submitted that Sylvia Owuor resigned on November 7, 2017 and the Claimant signed the taking over of responsibilities on December 7, 2017.
96. As regards the reasons for dismissal, the Claimant submitted that he was not accorded a fair hearing as he was not given an opportunity to challenge the correctness of the accusations. That desertion was not proved. The decision in *Jumaa Mangaro v China Jiangxi International Kenya Ltd* (2020) eKLR was cited to reinforce the submission as was the decision in *Donald Odeke v Fidelity Security Ltd* (2012) eKLR regarding opportunity to respond to the charges among other decisions.
97. The Claimant submitted that no show cause letter was issued itemizing the allegations against him to warrant written representations and none was produced in court contrary to the Respondent's manual.
98. Reliance was made on the decisions in *Hosea Akunga Ombwori V Bidco Oil Refineries Ltd* (2017) eKLR and *Anthony Mkala Chitavi v Malindi Water and Sewerage Co. Ltd* on the essence of an employee being notified of the allegations or charges against him or her.
99. The Claimant submitted that the Respondent had neither a valid nor fair reason to terminate his employment.
100. The decision in *Fredrick Amboga v Fones Direct* (2017) eKLR was used to urge the submission.
101. As regards due process, the Claimant submitted that the suspension letter and the invitation for disciplinary hearing had vague charges as emphasized by the Court of Appeal in *David Wanjau Muboro v Ol Pejeta Ranching Ltd* (2014) eKLR.
102. The Claimant urged that the reasons for termination and those in the notice to show cause must not significantly be at variance as held in *Zephania O. Nyambane & another v Nakuru Water & Sanitation Services Co. Ltd* (2013) eKLR.
103. The Claimant submitted that the Respondent had no valid ground to dismiss him from employment in terms of Section 45(2) of the *Employment Act, 2007*.
104. That the appeal against dismissal was never determined and minutes of the hearing were not shared and the Respondent's process fell short of the requirements of Section 41 of the *Employment Act, 2007*.
105. The Claimant submitted that he only saw the outcome of the appeal when he filed the instant suit.
106. On whether the Claimant was discriminately dismissed, the Claimant submitted that the Finance Co-ordinator had approved the cashing of the cheque. The cheque in question is unclear. That usage of activity funds in petty cash was not new. That one Brenda had done it previously.
107. The decision in *Post Office v Fennell* (1981) IRLR 221 was cited to urge that the termination of the Claimant's employment was discriminatory, unjust and inequitable as Brenda Lucas was not dismissed.
108. On the Verifying Affidavit, the Claimant submitted that since the Respondent filed a notice of change of Advocates dated September 16, 2021, it was not possible for the law firm to draw the affidavit at the time of filing of the response and Counter-claim and the affidavit was therefore fake as it was dated October 5, 2020.
109. The Claimant urged the court to strike out the Counter-claim on the basis that the affidavit was fake.
110. As regards costs, the Claimant submitted that no money was lost as claimed by the Respondent in its Counter-Claim. That if any loss was suffered, the audit report would have ascertained the amount.



111. That the Respondent did not inform the Claimant the sum claimed as Counter-Claim.
112. That Brenda Lucas did not testify on her report dated September 30, 2019 and the report had no mention of monies owing.
113. The Claimant further submitted that the alleged cheques encashed without authority were produced in court and RWII confirmed that no money was lost and the Claimant was not charged for misappropriation. That if the money had been lost, RWII should have plainly stated so.
114. As regards the unpaid salary for July, August and 6 days in September, 2019, the claim relied on the Respondent's email to the effect that his salary for July 2019 was being prepared as an admission that the amount was owing.
115. That the half-salary promised by the suspension letter was not paid.
116. On accrued leave pay, the Claimant relied on the Respondent's Human Resource Manual as well as case law to urge that leave was a legal entitlement that cannot be forfeited as was held in *Richard Abiero v Nyalii Golf and Country Club Ltd* (2020) eKLR and the Respondent did not produce the Claimant's leave record.
117. As regards house allowance, the Claimant submitted that the sum of Kshs 105,000/= was basic pay as agreed with the former Executive Director of the Respondent. Reliance was made on the decision in *Sani Orina v Hiprora Business Solutions (EA) Ltd* (2017) eKLR to urge that gross pay as opposed to basic pay included house and other allowances. That his salary was not consolidated as evidenced by the contract dated October 1, 2017 which the Claimant signed on October 2, 2017.

### **Respondent's submissions**

118. The Respondent's counsel isolated three issues for determination;
  - i. Whether the Claimant was subjected to unfair and discriminatory treatment.
  - ii. Whether the process employed by the Respondent was fair.
  - iii. Whether the Claimant carried out his duties in a careless and negligent manner to warrant dismissal.
119. On the alleged discrimination, counsel submitted that the Claimant was not treated in a discriminatory manner with respect to recruitment, training, promotion and terms and conditions of employment.
120. The court was invited to examine the Respondent's documentary evidence with respect to Claimant's next of kin, leave application forms, payroll for June and December 2018 and 2017.
121. Reliance was made on the decisions in *Barclays Bank of Kenya Ltd v Gladys Muthoni & 20 others* (2018) eKLR and *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* (2020) eKLR to underline the concept of discrimination.
122. Counsel urged that the Claimant had not placed before the court sufficient material to establish that he was treated in a discriminatory or unfair manner.
123. As regards the process of termination, counsel submitted that the process was not only fair and procedural but also consistent with the provisions of Section 45 of the *Employment Act, 2007*.



124. The court was referred to the evidence of RWI on invitation of the Claimant to the disciplinary hearing, extract of minutes, attendees, agenda of the board meeting held on August 28, 2019, termination letter, appeal and outcome letter dated October 4, 2019.
125. Reliance was made on the decision in *National Bank of Kenya v Njue John* (2019) eKLR to underscore the essence of compliance with the provisions of Sections 41 and 45 of the *Employment Act, 2007*.
126. Counsel submitted that the Claimant responded to the audit report.
127. The decision in *Elinathan G Kairu v Nakumatt Holdings Ltd* (2017) eKLR was relied upon to demonstrate the purpose of suspension of an employee as was the decision in John Jaoko Othino v Intrahealth International (2022) eKLR on the essentials of a fair procedure of termination of employment.
128. Counsel further submitted that the Respondent conducted a substantially fair process and urged the court to find that termination of the Claimant's employment was fair.
129. As to whether the Claimant discharged his duties in a careless, negligent manner, counsel submitted that the Claimant failed to carry out his duties as envisioned by the contract of employment, code of conduct among others.
130. Reliance was made on the decisions in *George Njenga Kinyua v China Road and Bridge Corporation* (2021) eKLR on the burden of proof.
131. The court was invited to examine all the exhibits and evidence provided by the Respondent.
132. Finally, the decisions in *Kenya Revenue Authority v Reuvel Waitbaka Gitabi & 2 others* (2019) eKLR and *Galgalo Jarso Jillo v Agricultural Finance Corporation* (2021) eKLR were cited to urge that the Respondent had discharged the burden of proof in demonstrating that the Claimant carried out his duties carelessly and negligently.

### **Findings and determination**

133. The issues for determination are;
  - i. Whether the claimant was employed by the Respondent on March 24, 2017 or was a consultant.
  - ii. Whether the Respondent treated the Claimant in a discriminatory manner.
  - iii. Whether termination of the Claimant's employment was unfair.
  - iv. Whether the Claimant is entitled to the reliefs sought.
134. As to whether the Claimant was employed on March 24, 2017, parties have adopted opposing positions. While the Claimant testified on cross-examination and submitted that he was employed by the then Executive Director, Madam Angote on March 24, 2017 under a verbal agreement, the Respondent maintained that he was engaged as a consultant until October 1, 2017 when he was given a letter of appointment which was not filed.
135. RWI confirmed on cross-examination that from March 24, 2017, the Claimant related to the Respondent as a Consultant to support the Finance Department.
136. The witness was not even aware that the Respondent had not filed a consultancy agreement as there was none between the parties.



137. Puzzlingly, the witness confirmed on cross-examination that the Claimant's attendance records showed that he used to clock-in at 8.00 am and leave at 5.00 pm.
138. The witness further confirmed that the Claimant was copied on emails from the Executive Director dated March 24, 2017 which showed that the Claimant and another officer were responsible for the Swiss Embassy as well as the French Embassy. She also confirmed that the documents sent to the Claimant and another team member by the Finance and Administration Co-ordinator were part of the ordinary operations of the Respondent.
139. The documents revealed that the Claimant was listed as an employee of the Respondent having joined on March 24, 2017.
140. Similarly, an email dated March 23, 2017, the Respondent's Executive Director made an offer to the Claimant after the Respondent perused his Curriculum Vitae and he was to report to work the following day. The Respondent did not disclose the nature of the offer made but it is clear that the Claimant accepted the offer and reported to work on 24<sup>th</sup> March, 2017 as emails on record reveal.
141. Relatedly, the Executive Director's email dated March 23, 2017 to the Claimant on acceptance of an offer and reporting the following day buttresses the Claimant's argument that he was an employee of the Respondent from March 24, 2017.
142. Finally, the Claimant received payments from May 22, 2017 and the amount paid monthly was the same, a net of Kshs 76,000/=.
143. The Respondent's case that the Claimant was engaged as a consultant pales against the overwhelming evidence of the Claimant to prove that he was an employee of the Respondent.
144. Without evidence of a Consultancy Agreement, copies of invoices submitted by the Claimant for purposes of payment or certificate of withholding tax, the Respondent could not substantiate its allegation that the Claimant was employed by the Respondent as a consultant on March 24, 2017.
145. Section 2 of the *Employment Act, 2007* defines an employee as "a person employed for wages or salary and includes an apprentice and indentured learner."
146. The definition of employer is sufficiently expansive to encompass the Respondent.
147. More significantly, Section 2 of the *Employment Act* defines a contract of service as  
"an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership . . ."
148. The Claimant testified that he entered into oral contract with the then Executive Director as confirmed by email communication and payment and the Respondent tendered no evidence to controvert the Claimant's testimony.
149. In the circumstances, the court is satisfied that the Claimant has on a balance of probabilities demonstrated that the Respondent employed him on March 24, 2017 as an accountant.
150. As regards the alleged discriminatory treatment, parties have adopted contrasting positions.
151. The Claimant's argument is that he was discriminated in relation to medical cover for his 3<sup>rd</sup> child, non-attendance of team building, acting allowance and termination among others while the Respondent denies the allegation.



152. As regards discrimination, the home port is a delineation of the concept of discrimination.
153. According to *Black's Law Dictionary*, 10<sup>th</sup> Edition, discrimination means;  
 “Differential treatment, especially, a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.”
154. In *Nyarangi & others v Attorney General* (2008) KLR 688, the court stated as follows;  
 “Direct discrimination involves treating someone less favourably because of their possession of an attribute such as race, sex, religion compared to someone without that attribute in the same circumstances.”
155. Equally, in *Peter K. Waweru v Republic* (2006) eKLR, the court defined discrimination as follows;  
 “. . . Discrimination means affording different treatment to different persons attributable wholly or mainly to their description whereby persons of one such description are subjected to . . . restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description . . . Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex . . . a failure to treat all persons equally where no reasonable distinction can be found between those forwarded and those not favoured.”
156. Wilson J. expressed similar sentiments in *Andrews v Law Society of British Columbia* (1989) 1 SCR 321.
157. Article 27 of the *Constitution of Kenya, 2010* prohibits direct and indirect discrimination on the ground of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
158. Section 5(3) of the *Employment Act* adopts a similar formulation.
159. Section 5(7) of the *Employment Act* imposes a heavy duty on the employer to disprove an allegation of the discrimination by an employee. However, for the burden of proof to shift to the employer, the employee must as a minimum demonstrate *prima facie* discrimination as was held in *Raila Odinga & others v IEBC & others* (2014) eKLR.
160. The pith and substance of the Claimant’s allegation is that he was discriminated on various fronts.
161. I will now proceed to determine whether the Claimant has demonstrated *prima facie* discrimination and the Respondent’s rebuttal.
162. On the appeal, the Claimant alleged that it was not determined while the Respondent submitted that it was though the outcome may not have been communicated to the Claimant.
163. On cross-examination, the Claimant admitted that he was accorded two chance to appear before the appeal committee but did not.
164. In the court’s view, the fact that the Respondent did not communicate the outcome of the appeal to the Claimant does not amount to discrimination.
165. As regards medical insurance, the Claimant alleged that his 3<sup>rd</sup> child was not included in the medical insurance.



166. On cross-examination, the Claimant admitted that he did not include the 3<sup>rd</sup> born as next of kin and had no evidence to prove otherwise.
167. Equally, RWI confirmed on cross-examination that the Claimant did not file documents of his 3<sup>rd</sup> child and the Respondent had no evidence of the child.
168. RWI confirmed that the Claimant was required to file documents of his 3<sup>rd</sup> child but did not.
169. In the circumstances see also the sentiments of Supreme Court in *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* (2020) eKLR.
170. It is the finding of the court that the Claimant has failed to demonstrate that he was discriminated on the ground of medical cover as the other two children were covered, which is evidence that he had provided their documentation as required by the employer.
171. On the membership of the Provident Fund, the Claimant testified that the scheme was voluntary and that he applied through the Finance Manager. He also confirmed on cross-examination that he had no evidence to show that he had applied, when or followed up his application to ascertain its status.
172. Similarly, RWI confirmed that she had no documentary evidence to show that the Claimant applied to join the Provident Fund which was voluntary. The witness also confirmed that not all employees were members.
173. In *Helga Ohany v German School Society* (2017) eKLR, the court states as follows;
- “The Respondent submits that the Claimant did not apply to join the pension scheme and was therefore not denied an opportunity to join as alleged or at all. No evidence has been availed by the Claimant to prove the allegation. The option to join the scheme was at all material times voluntary and any employee of the Respondent who wished to join was free to do so subject to the applicable rules. . .”
174. These sentiments apply on all fours to the facts of the instant suit.
175. Finally, the Respondent furnished a copy of the list of its employees who were members of the Provident Fund and the Claimant was not among them.
176. In the absence of evidence to prove that the Claimant sought to join the Provident Fund and was denied or his documents were not processed and enquiries and follow up yielded nothing. It is the finding of the court that the Claimant was neither unfairly treated nor discriminated by the Respondent.
177. On attendance of staff team building event, the Claimant alleges that he was discriminated. The Respondent’s witness testified that the Claimant was performing other duties.
178. Intriguingly, the Claimant’s contention is non-attendance as opposed to an allegation that he was not invited for the event. It is unclear as to when the alleged event took place, who invited participants and how and whether the Claimant was invited. The Claimant did not furnish a list of the invitees or attendees. As pleaded, it is unclear as to why the Claimant did not attend the alleged event.
179. In the court’s view, the Claimant has failed to demonstrate how the non-attendance is attributable to the Respondent or any of its officers or amounted to discrimination.
180. As regards acting as Co-ordinator Finance and Administration, the Claimant submitted that he acted from December 7, 2017 to March 26, 2018 when the substantive coordinator was appointed.



181. Puzzlingly, although the Respondent stated that the Claimant could not have acted in the position as he was serving a Probationary Contract and could not have been asked to act in a Senior position, the fact that the Claimant signed the former Co-ordinator's Clearance Form, as the Co-ordinator, Finance and Administration coupled with the email from the Executive Director to the Claimant in appreciation of the Claimant's work "during the transition and acting period" would appear to suggest that the Claimant indeed acted in the position.
182. The email reveals that there was a transition and acting. The transition must have been from the former Co-ordinator, one Sylvia Owuor to the new Co-ordinator in March 2018.
183. As regards the acting being referred to by the Executive Director of the Respondent, the Respondent adduced no evidence of who was acting after Sylvia Owuor left and to whom the Claimant was reporting.
184. Clause 10 of the Respondent's Human Resource Management Policy, 2008 provides that;

"Where any person is required to act in a higher position for a period exceeding one calendar month, they shall be paid acting allowance at the rate of 50% of the difference between the employee's actual salary and the actual salary paid to the higher position."
185. To embellish his argument, the Claimant demonstrated that Annete Mudola who acted as Executive Director in June and July 2018 was paid acting allowance as was John Mwariri who acted as Co-ordinator Legal Aid in July, August and September 2018 and Faith Ochieng who acted as Co-ordinator AGCP in October and December 2018.
186. Regrettably, the Respondent tendered on shred of evidence to disprove the Claimant's assertions. The mere retort that he could not be asked in a more senior position during the Probationary Contract could not avail the Respondent as evidence on record shows otherwise.
187. From the evidence on record, the court is satisfied and finds that the non-payment of acting allowance to the Claimant from December 7, 2017 to March 26, 2018 was discriminatory.
188. As regards denial of salary during suspension, the Claimant testified that although the suspension letter promised that he would be paid half-salary, he was not paid at all as confirmed by RWI on cross-examination. By documentary evidence, the Claimant demonstrated that his supervisor, one Louisa Burudi was suspended by letter dated April 18, 2019 and paid full salary while on suspension.
189. RWI testified that the Respondent's Human Resource Policy had no provision on payment or non-payment of salary during suspension but could not explain the apparent selective treatment of staff in similar circumstances.
190. Puzzlingly, the Respondent did not respond to the Claimant's appeal against half-pay during suspension. The Claimant was emphatic that he considered the treatment discriminatory as his supervisor who had been on suspension earlier was paid full salary, the email dated August 16, 2019 notwithstanding.
191. With no scintilla of evidence to controvert the Claimant's evidence on the alleged discrimination, the court is satisfied and finds that the non-payment of salary or half-salary by the Respondent during the Claimant's suspension was discriminatory.
192. As regards denial of leave, the Claimant alleged that he was not allowed to proceed on leave and was thus discriminated.



193. It requires no emphasis that annual leave is a statutory entitlement of an employee as ordained by the provisions of Section 28 of the [Employment Act, 2007](#).
194. The Claimant tendered no evidence of any rejected leave application form. The Respondent on the other hand provided two leave application forms dated March 20, 2018 for 5 days and March 8, 2018 for 3 days. In the case of the earlier application, the Executive Director made a comment and asked for handover notes. The subsequent application was approved.
195. From the record, it is unclear as to whether the notes were attached to the application.
196. From the foregoing, it is the finding of the court that the Claimant has failed to demonstrate that he was treated unfairly or discriminated on matters germane to leave.
197. Finally, with regard to discriminatory treatment in termination of employment, the Claimant's allegation that other person's employment was not terminated for alleged similar allegations, the Claimant adduced no evidence of the allegations made against those other persons and how the Respondent dealt with them, to sustain the allegation. In the circumstances, the court is satisfied and finds that the allegation was not proved.
198. With regard to termination of the Claimant's employment, while the Claimant alleges that it was unfair for want of valid reason and procedure, the Respondent urged that it was conducted in accordance with the law.
199. The provisions of the [Employment Act, 2007](#) are clear that for a termination of employment to pass muster, it must be substantively justifiable and procedurally fair.
200. The provisions of Section 35, 41, 43, 44, 45 and 47(5) of the Act set out the infrastructure on termination of employment. (See [Pius Machafu Isundu V Lavington Security Guards Ltd](#) (2017) eKLR).
201. Section 45 is the bedrock of fair termination of employment. It is emphatic that;
1. No employer shall terminate the employment of an employee unfairly.
  2. A termination of employment by an employer is unfair if the employer fails to prove: –
    - a. that the reason for the termination is valid;
    - b. that the reason for the termination is a fair reason –
      - i. related to the employee's conduct, capacity or compatibility or
      - ii. based on the operational requirements of the employer; and
    - c. that the employment was terminated in accordance with fair procedure.
202. The foregoing provisions are further embellished by other provisions of the [Act](#).
203. On their part, courts have been steadfast in the enforcement of the foregoing provisions and have applied the twin requirement of a fair termination of employment as exemplified by the Court of Appeal decision in [Naima Khamis v Oxford University Press \(EA\) Ltd](#) (2017) eKLR and the sentiments of Ndolo, J in [Walter Ogal Anuro v Teachers Service Commission](#) (2013) eKLR.



## Reason for termination

204. From the evidence on record, it is clear that the Respondent engaged the firm of Carr Stanyer Gitau & Co. to conduct an investigation regarding payments and adherence to policies from September 1, 2018 to April 16, 2019 and the firm forwarded its report to the Respondent by letter dated May 16, 2019.
205. RWII, a trained and experienced Accountant/Auditor since 1979 produced the report and testified on it.
206. Although the report made a total of eight (8) findings, it made no specific recommendations. Although, the Respondent provided no letter or email as evidence, it forwarded the report to the Claimant and he responded to the issues raised. He addressed three issues on unauthorised diversion of donor funds, Kshs 225,650/=, petty cash and uber mix up and unauthorised cash payment.
207. It would appear that the Respondent relied on the audit report and the Claimant's response to direct the Claimant to proceed on suspension by letter dated July 11, 2019 as apparent from the suspension letter.
208. It is common ground that the Claimant was invited for disciplinary hearing and was subsequently dismissed from employment.
209. The termination letter dated September 4, 2019 itemised five (5) grounds of the summary dismissal namely;
  1. Failure to discharge duties properly and efficiently, use of organizational property, efficiently and economically and absence from duty.
  2. Failure to complete work with due care and diligence.
  3. Failure to perform duties within acceptable standards and indiscipline.
  4. Careless and improper performance of duties without regard to deadlines and quality.
  5. Absence from duty after expiry of suspension on 15<sup>th</sup> August, 2019 for a period exceeding 10 days.
210. Further, the letter outlined the attendant particulars.
211. Other than the contents of the Audit Report which formed the basis of the Claimant's suspension, no other allegations were made against the Claimant as the Respondent did not notify the Claimant the charges he was facing by way of a show cause letter.
212. The Claimant's response to the Audit Report was his explanation of the issues raised by the Auditors. There is no indication that it was a response to charges against the Claimant.
213. The absence of a notice to show cause which typically heralds a disciplinary process would appear to have placed the Claimant in a disadvantaged position as he could not ascertain the specific charges he was facing at the hearing and as evidenced by the letter of termination, the disciplinary committee relied on charges not in the Audit Report or invitation to notice to the disciplinary hearing.
214. The Claimant contested the alleged desertion vociferously as no particulars were provided and it was one of the grounds for dismissal.
215. As regards the alleged diversion of donor funds Kshs 255,650/=, the Claimant did not expressly deny the allegation and the issue of reimbursement of M/s Louisa Kshs 19,000/= had been raised.



216. The Claimant explained that M/s Louisa had facilitated cab services for 8 members of staff on undisclosed dates upto a total of Kshs 19,000/=, thus financing the Respondent's activities using personal funds.
217. Similarly, the Claimant admitted the mix up of petty cash and uber owing to exhaustion of petty cash which ought to have been replenished before it was exhausted.
218. Payment of a service provider in cash was also not denied.
219. Noteworthy, the Claimant did not address the issue of staff debtors with credit balances, absence of a casual master roll, recruitment, cash payment of regular suppliers, non-compliance with finance policies and attendant risks. The fact that the foregoing issues were not specifically responded to by the Claimant in his response would appear to suggest that he had no explanation or opted not to respond.
220. 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.
221. The absence of a notice to show cause or investigation report notwithstanding, the court is satisfied and finds that based on the documentary evidence on record, the Respondent has on a balance of probabilities established that it had a valid and fair reason to terminate the Claimant's employment but should have accorded him the requisite notice.

## **Procedure**

222. As adverted to elsewhere in this judgement, the Respondent invited the Claimant for a disciplinary hearing by letter dated August 6, 2019 and the hearing was slated for August 14, 2019 at 11.00 am. The letter itemised the Agenda as; The Audit Report. Your response to the Audit Report. The Auditor's recommendations to your response. The disciplinary procedure. Contract of employment.
223. The letter informed the Claimant that he was entitled to attend with a colleague of his choice. The letter assured him that he would be accorded every opportunity to state his case and discuss any issue relevant to the matter. The letter made no specific allegations against the Claimant.
224. The Claimant confirmed having attended the hearing on August 14, 2019 and appealed but received no response and did not attend the appeal hearing despite invitation.
225. RWI confirmed on cross-examination that minutes of the disciplinary hearing were not shared with the Claimant before he filed the appeal.
226. Strangely, the alleged minutes of the disciplinary hearing filed by the Respondent is a 9 page document but only pages 7-9 were filed. It is unclear to the court why the Respondent found it prudent not to file the entire document to reveal how the proceedings were in fact conducted. Only the entire document could reveal what transpired on that date, including whether the charges were read out to the Claimant and how he responded to each of them and whether he made any requests or had reservations about the proceedings.
227. For instance, was the alleged loss of funds one of the charges the claimant was required to confront and what was his response, the fact that he was not accompanied by a colleague notwithstanding? RWI, the expert witness could not on cross-examination confirm that the diversion of funds occasioned any



loss to the Respondent and was not even aware of the amount being claimed by the Respondent in its Counter-Claim.

228. I will now proceed to assess whether the procedure adopted by the Respondent met the threshold prescribed by Section 41 of the *Employment Act, 2007*.

229. As held by the Court of Appeal in *Pius Machafu Isindu v Lavington Security Guards Ltd* (supra), Section 41 of the *Employment Act* provides a mandatory procedure to be complied with by the employer before termination of employment.

230. In *Postal Corporation of Kenya v Andrew K. Tanui* (2019) eKLR, the Court of Appeal itemised the requirements of Section 41 as follows;

“Four elements must thus be discernible for the procedure to pass muster:-

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

231. Applying the foregoing principles to the facts of this case, the court is satisfied that the provisions of Section 41 of the *Employment Act, 2007* were not complied with as by law required in that;

First, the Respondent did not furnish any iota of evidence to demonstrate that it itemised the specific allegations against the Claimant. It neither filed a notice to show cause or warning letter nor other document explaining the grounds/reasons for which the Respondent was considering termination of the Claimant’s employment.

232. The Claimant submitted as much and none of the Respondent’s witnesses could identify the specific charges in any document on record.

233. The notice of invitation to disciplinary hearing made no reference to the real agenda of the meeting. It merely itemised the documents the committee would rely on in prosecuting its unknown case against the Claimant.

234. Similarly, the Respondent did not comply with Clause 31 of its Human Resource Manual on the Disciplinary Procedure that required action by the immediate supervisor, response by the employee, reference to the Executive Director in view of the Claimant’s job grade at MM3.

235. More significantly, Clause 31(3) provides that;

“In any investigation, employees are entitled to know the whole case against them and must be given adequate opportunity to prepare their defence. No evidence can be used against an employee unless they have been given a copy of the same.”

236. Second, the undated 3 page extract of the minutes of the disciplinary hearing held on 14<sup>th</sup> August, 2019 make no reference as to whether the Chairperson of the meeting or anyone explained to the Claimant the reasons why the Respondent was considering termination of the Claimant’s employment.



237. The extracts have no list of attendees or agenda, nor the substance of the discussion.
238. The Claimant submitted the refusal to avail the entire dossier was that it would have worked in his favour, a submission that appears plausible.
239. The court is in agreement with the sentiments of the court in *Hosea Akunga Ombwori v Bidco Oil Refineries Ltd* (supra), *Anthony Mkala Chitavi V Malindi Water & Sewerage Co. Ltd* (2013) eKLR, *David Wanjau Muhoro v Ol Pejeta Ranching Ltd* (supra) and *Zephania O. Nyambane v Nakuru Water and Sanitation Services Co. Ltd* (2013) eKLR relied upon by the Claimant.
240. In the case of the last decision, the court is not persuaded that the reasons for termination set out in the letter dated September 4, 2019 were substantially at variance with the issues raised by the Audit Report which the Claimant was aware of and responded to.
241. Third, the fact that the Claimant was not accompanied by an employee of his choice is of no moment as he had been informed of the entitlement.
242. The extract of the minutes provided by the Respondent conveniently omitted the Claimant's representations but page 7 provides what is described as "Analysis of the Defence."
243. In determining the issue of procedural propriety or otherwise, the court is guided by the sentiments of the Court of Appeal in *Postal Corporation of Kenya V Andrew K. Tanui* (Supra) on the essence of procedural fairness.
244. In the end, the court is satisfied and finds that from the evidence on record, the Respondent has on a balance of probability failed to demonstrate that the procedure it employed in the dismissal of the Claimant met the threshold prescribed by Section 41 of the *Employment Act, 2007*.
245. In sum, it is the finding of the court that termination of the Claimant's employment was not conducted in compliance with the provisions of Section 41 of the *Employment Act, 2007* and was thus unfair for want of procedural propriety.

### **Counter-claim**

246. As regards the Counter-claim, the Respondent alleged that the Claimant acted negligently, breached the contract of employment and unjustly enriched himself to the detriment of the Respondent as it suffered a loss of Kshs 263,150/=, the amount claimed.
247. Surprisingly, neither RWI nor RWII testified on the alleged negligence or unjust enrichment or loss. Similarly, particulars of the alleged negligence were not disclosed. RWII testified that he could not confirm that any money was lost. The undated Report by RWII makes no reference to the alleged negligence or unjust enrichment by the Claimant. While it is evident that the Claimant had slackened in his duties, the Respondent adduced no evidence of negligence by commission or omission or any unjust enrichment.

From the foregoing, it is the finding of the court that the Counter-claim was uproven.

248. As regards the reliefs prayed for, the court proceeds as follows;
- a. Having found that the Claimant was discriminated by the Respondent in relation to denial of salary during suspension and non-payment of acting allowance, a declaration to that effect is merited.
  - b. Having found that termination of the Claimant's employment was unfair for want of procedural fairness, a declaration to that effect is merited.



c. Special damages

**i. Unpaid salary for 6 days**

249. The Respondent did not deny that it owed the Claimant salary for the 6 days he worked from March 24, 2017 to March 31, 2017 and the same is awarded.

**ii. Unpaid acting allowance December 2017 and March 2018**

250. Having found that the Claimant was treated in a discriminatory manner with regard to payment of acting allowance, the prayer is merited and is accordingly awarded.

**iii. Unpaid salary July and August 2019**

251. Having found that non-payment of the Claimant's salary during suspension was discriminatory, the unpaid sum is awarded.

**iv. Unpaid salary for 6 days in September 2019**

252. The Respondent adduced no evidence that the Claimant did not report to work for 6 days in September 2019.

Salary for the 6 days is awarded

**v. Accrued annual leave**

253. The Respondent led on evidence to prove that the Claimant indeed proceeded on annual leave and is thus entitled to the actual number of days accrued leave.

**vi. Leave travel allowance 2018/2019**

254. The Respondent tendered no evidence to show that the Claimant was paid leave travelling allowance. The same is awarded.

**vii. Unpaid salary from March 2017 to December 2017 Kshs 225,000/=**

255. The Claimant adduced no evidence to prove that he was not paid for work done from March 2017 to December 2017. Neither the Claimant's written statement dated January 13, 2020 nor the oral evidence adduced in court make reference to any unpaid salary for 2017.

The Claim is declined.

**viii. House Allowance**

256. Whereas the terms of the oral agreement between the Claimant and the Respondent are unclear, the full time written contract of employment dated October 2, 2017 provided that the Claimant's basic monthly salary was Kshs 80,000/=. The amount was exclusive of housing allowance.

257. It requires no belabouring that house allowance is a statutory entitlement and unless the salary is consolidated or the employer provided housing or any other exception to the provisions of Section 31(1) of the *Employment Act, 2007* was applicable, the employee is entitled to a housing allowance and the rate of 15% of the actual basic pay is deemed reasonable as was held by the Court of Appeal in *Grain Pro Kenya Inc. Ltd v Andrew Waitbaka Kiragu* (2019) eKLR.



258. In the absence of evidence to controvert the Claimant's prayer for house allowance, the same is awarded at 15% of the actual basic pay effective October 2, 2017.

**ix. One month's salary in lieu of notice**

259. The Respondent adduced no evidence that it accorded the Claimant the requisite one (1) month notice or paid the same.

The Claimant is awarded one (1) month's salary in lieu of notice.

**x. Compensation for unfair termination, Kshs 2,850,000.00**

260. Having found that termination of the Claimant's employment was unfair for want of procedural propriety, the Claimant is eligible for compensation as ordained by the provisions of Section 49(1)(c) of the *Employment Act, 2007*.

261. In determining the quantum of compensation, the court is enjoined to consider all the relevant factors under Section 49(4) of the *Act* and in the instant case the court has taken into consideration the following;

1. The Claimant was an employee of the Respondent from March 24, 2017 to September 2019, a duration of about 2 years and 5 months which is a short time.
2. The Claimant wished to remain an employee of the Respondent as evidenced by the appeal lodged with the Respondent, although he did not attend the hearing citing financial challenges.
3. The Claimant had no previous warnings or notice to show cause.
4. The Claimant substantially contributed to the termination of employment by the Respondent as the external auditor found certain irregularities implicating the Claimant's conduct as an employee of the Respondent.

262. In light of the foregoing, the court is satisfied that the equivalent of two (2) month's salary is fair.

**xi. General damages for failure to issue a contract Kshs 100,000/=**

263. The Claimant laid no basis for this claim and adduced no evidence of the loss suffered by the absence of a written contract of service.

The prayer lacks a legal justification and is declined.

**xii. General damages for unfair discrimination Kshs 1,500,000/=**

264. Having found that the Claimant was discriminated on account of non-payment of acting allowance and salary during suspension and having awarded the unpaid allowances, the court is satisfied that the sum of Kshs 200,000/= is fair.

265. In the upshot, judgement is entered for the Claimant against the Respondent in the following terms;

- a. Declaration that termination of the Claimant's employment was unfair.
- b. Declaration that the Claimant was discriminated by non-payment of acting allowance and salary during suspension.
- c. Unpaid salary for 6 days (March 24, 2017 to March 31, 2017).
- d. Unpaid acting allowance.



- e. Unpaid salary during suspension.
- f. Unpaid salary for 6 days September 2019.
- g. Accrued annual leave.
- h. Leave travelling allowance 2018/2019.
- i. House allowance at 15% of actual basic salary from October 2, 2017 to the date of termination of employment.
- j. One (1) month's salary in lieu of notice.
- k. Equivalent of 2 months salary.
- l. General damages Kshs 200,000/=.
- m. Certificate of service
- n. Costs of this suit.
- o. Interest at court rates from the date hereof till payment in full.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 16<sup>TH</sup> 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 March 15, 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

