



**Muchiri v Laikipia University (Cause 058 of 2021)
[2023] KEELRC 2179 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2179 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 058 OF 2021
DN NDERITU, J
SEPTEMBER 21, 2023**

BETWEEN

SOFIA WANJIRU MUCHIRI CLAIMANT

AND

LAIKIPIA UNIVERSITY RESPONDENT

JUDGMENT

Introduction

1. The claimant commenced this cause by way of a statement of claim dated October 21, 2021 filed in court on October 22, 2021 through Mutonyi, Mbiyu & Co Advocates. As expected, the statement of claim was accompanied with a verifying affidavit, claimant's witness statement, a list of documents and copies of the listed documents.
2. The claimant is seeking the following -
 - a. A declaration that the unilateral reduction of the claimant's remuneration in February 2021 was unlawful and unfair.
 - b. A declaration that the unilateral reduction of the claimant's remuneration amounts to unfair labour practices.
 - c. An order reinstating with effect from March 1, 2021 the sum of Kshs 115,000 per month unlawfully deducted from the claimant's remuneration.
 - d. An order prohibiting the respondent from unilaterally changing terms of employment of the claimant.
 - e. An order that the claimant's terms be retained as they were when she was the finance officer of the respondent.



- f. An order of injunction restraining the respondent from unilaterally reducing the remuneration of the claimant.
 - g. General damages for unfair labour practices.
 - h. Interest on the withheld remuneration and on damages at court rates.
 - i. Costs.
3. On November 30, 2021 the respondent through its in-house counsel, Ms I. N Wanjau, advocate, filed a statement of response to the claim and a counter-claim praying that the claimant's cause be dismissed with costs for want of merits and seeking for the following orders –
 - a. An order directing the claimant to refund in full Kenya shillings two million, six hundred and forty five (Kshs 2,645,000) paid in error to the claimant between the period of March 28, 2019 to February 25, 2021.
 - b. Costs of the suit awarded to the respondent.
 - c. Interest payable at court rate from the date of judgment until payment in full.
 - d. Any other relief that this honourable court deems just.
 4. The respondent also filed a list of documents and copies of the listed documents alongside a witness statement by Dr Hezron Nyamwega (RW1).
 5. On December 16, 2021 the claimant filed a reply to the response to the claim, reiterating the contents in her statement of claim, and a defence to the counter-claim praying for dismissal of the same for lack of merits.
 6. On March 10, 2022 the respondent appointed Sheth & Wathigo, Advocates to act for it and on March 14, 2022 filed a supplementary list of documents and copies of the listed documents.
 7. This cause came up in open court for hearing on July 25, 2022 when the claimant (CW1) testified and closed her case. The defence was heard on the same day whereby RW1 testified and the respondent's case was closed as well.
 8. Counsel for both parties addressed and summed up their respective client's case by way of written submissions. counsel for the claimant, Mr Mutonyi, filed his submissions on October 14, 2022 while counsel for the respondent, Miss Oteyo, filed her submissions on November 11, 2022.
 9. In a ruling delivered on February 21, 2022 this court issued the following interim orders which have remained in force pending the hearing and determination of this cause –
 1. That pending the hearing and determination of this cause a mandatory injunction be and is hereby issued ordering the respondent to pay and remit to the claimant all deductions made from her salary at the rate of Kshs 115,000/= per month from March 1, 2021 up to and including February, 2022.
 2. That the said aggregate amount due in (1) above be paid on or before March 30, 2022.
 3. That pending the hearing and determination of the main cause a temporary injunction be and is hereby issued restraining the respondent from reducing the monthly remuneration of the claimant by the sum of Kshs 115,000/= per month, or any other sum, or at all.
 4. That the costs of this application shall be in the cause.



ii. The Claimant's Case

10. The claimant's case is expressed in the statement of claim, the oral and documentary evidence of the claimant (CW1), and the written submissions by her counsel and the same is summed up as hereunder.
11. In her statement of claim the claimant pleads that she was engaged by the respondent as its finance officer *vide* a letter of appointment dated May 16, 2011 on the terms and conditions stipulated therein. She continued performing her duties as finance officer until she was served with a letter dated November 12, 2018 wherein the respondent redeployed the claimant to act as a pioneer director, resource mobilization and investment.
12. It is the claimant's position that she was assured by the respondent that other than the new designation and the role and duty all the other terms of her engagement were unaffected and were to remain the same. For ease of reference the letter for the redeployment stated as follows –

Ref: LU/60583/116 November 12, 2018

Ms Sophia W. Muchiri

Thro'

Ag Deputy Vice Chancellor (AF &D)

Laikipia University

Dear Madam

RE: Appointment As Ag Director, Resource Mobilization And Vestment

This is to inform you that you have been redeployed as the Ag. Director, Resource Mobilization and Investment officer with immediate effect.

Duties to the Directorate will be spelled to you by the University Resource Mobilization and Investment Board.

You will be the Secretary to the University Resource Mobilization and Investment Board.

Please arrange to hand over the office to the Deputy Finance Officer and report to the Ag. Deputy Vice Chancellor (Administration, Finance and Development) for further instructions.

All other terms of your employment remain the same.

I wish you all the best in your new assignment.

Thank you.

Yours faithfully

signed

Prof Kibett Rotich, PhD

Professor of Biostatistics and Informatics

Vice Chancellor

13. The claimant was not pleased with the redeployment and she appealed to the Vice Chancellor (VC) *vide* a letter dated November 15, 2018 stating as follows –

November 15, 2018

Sophia Wanjiru Muchiri



Box 1100-20100

Nyahururu

The Vice Chancellor,

Laikipia University,

Box 1100-20300

Nyahururu

Thro'

Ag. Deputy Vice Chancellor (A, F&D)

Laikipia University.

RE: Appeal Against Redeployment From Position Of Finance Office To Ag. Director, Resource Mobilization And Investment

Reference is made to your letter Ref: LU/60583/116 dated November 12, 2018 on the above subject.

I wish to appeal against the redeployment from position of Finance Officer to Ag. Director, Resource Mobilization and Investment.

My appeal is based on the following grounds;

1. I was vetted by virtue of being the fiancé Officer of Laikipia University and cleared by the government to resume work in my position as the finance officer.
2. My training and expertise is in accounts and finance
3. I have no relevant skills in the area that I have been redeployed to.
4. By virtue of being a qualified accountant, I am a member of the Institute of Certified Public Accountants (Kenya). My redeployment will jeopardize my professional membership since I will not be practicing in the profession.
5. My appointment letter states that it's the university management who may re-deploy me, but to a section or area where my services may be required.

I therefore appeal to resume my duties as the finance officer as per the directions of circular: Ref: MOF/CONF/29/03/'D'/(119) from the National Treasury and Planning dated October 23, 2018.

Yours faithfully

Signed

Sophia Wanjiru Muchiri

14. The appeal by the claimant was declined by the VC *vide* a letter dated November 26, 2018 and further explained in a letter dated November 28, 2018.
15. The claimant was not satisfied with the position taken by the VC and she filed a second appeal to the University Council (the council) through a letter dated November 30, 2018. This second appeal was not successful as the council wrote to the claimant on March 25, 2019 informing her that the redeployment was confirmed and that she had been appointed as the substantive pioneer holder of her new position of the director, resource mobilization and investment. Further, *vide* a letter dated March 28, 2019 the VC issued the claimant with a letter of appointment in her new role spelling out her duties and responsibilities.



16. It is the claimant's position that in all the foregoing correspondences the respondent promised and undertook to retain the claimant in her new role on the same terms that she enjoyed as finance officer. The said letters repeatedly stated that

“All your terms of employment remain the same.”

17. The claimant took up her new role as the director, resource mobilization and investment on the same terms of employment that she had enjoyed as the finance officer and continued to serve as per the newly prescribed and allocated duties and responsibilities. However, in a letter dated February 25, 2021 the respondent purported to adjust the claimant's allowances alleging that the claimant had erroneously and irregularly enjoyed and received payments in allowances that she was purportedly not entitled to. For ease of reference the said letter stated as follows –

Ref: LU/60583/139

February 25, 2021

Ms. Sophia Muchiri

Thro'

AG. Deputy Vice Chancellor (AF &P)

Laikipia University

Dear Ms. Muchiri

RE: Erroneous Payment

As its meeting held on February 24, 2021 the University Management Board resolved that the management allowances you have been drawing erroneously as a director be discontinued immediately.

These are:

Commuting allowance Kshs 110,000

Entertainment allowance Kshs 24,000

Responsibility allowance Kshs 36,000

Phone allowance Kshs 10,000

These allowances will be adjusted as below:

Commuting allowance Kshs 13,000

Entertainment allowance Kshs 20,000

Responsibility allowance Kshs 30,000

Phone allowance Kshs 2,000

In case of any query please contact the undersigned.

Signed

Dr Hezron Nyamwega, PhD

Registrar (Administration & Human Capital)

18. The claimant objected and protested to the purported unilateral adjustment of her terms of employment and more so the remuneration in her letter dated March 10, 2021 and referred to



the aforementioned undertaking and promise by the respondent to the effect that her terms of employment in her new role were to remain the same as those she enjoyed when she was the finance officer. In a swift rejoinder dated March 11, 2021 the respondent addressed the claimant as follows –

Ref: LU/60583/141

March 11, 2021

Ms. Sophia W. Muchiri

Thro'

AG. Deputy Vice Chancellor (AF &P)

Laikipia University

Dear Ms. Muchiri,

RE: Erroneous Payment

Reference is made to your letter dated March 10, 2021 on erroneous payment.

The University Management Board decision of February 24, 2021 which was communicated to you *vide* letter Ref; LU/60583/139 dated February 25, 2021 did not vary your terms of engagement.

The allowance in question are facilitative allowances which are applicable to officers in management.

The decision of the management in the light of your appeal is therefore upheld.

Yours sincerely,

Signed

Dr Hezron Nyamwaga, PhD

Registrar (Administration and Human Capital)

C. C. Vice Chancellor] to note in file

Ag. Deputy Vice Chancellor (ARSA)]

Registrar (AA)

Finance Officer

19. The claimant was not satisfied with the position taken by the management board (the board) of the respondent and hence appealed to the chairman of the respondent's council *vide* a letter dated March 27, 2021. It is the claimant's case that the respondent has failed, refused, and or neglected to respond to this appeal.
20. It is on the basis of the foregoing background that the claimant has approached this court for the reliefs stated above. As noted above the court issued interim orders maintaining status quo ante.
21. In her testimony in court the claimant reiterated the foregoing position based on her filed witness statement and produced all the listed documents as exhibits. It is the claimant's case that the redeployment was not done in good faith; the respondent has subjected her to unfair labour practices by purporting to unilaterally alter her terms of employment; and hence she seeks for the reliefs as stated in the introductory part of this judgment.
22. Further, it is the claimant's case that the counter-claim by the respondent is an afterthought made in bad faith and aimed at depriving her of what she is lawfully and rightfully entitled to. She prays that



her claim be allowed with costs and that the counter-claim be dismissed with costs. The submissions by her counsel shall be considered in the succeeding parts of this judgment.

III. The Respondent's Case

23. The respondent's case is contained in the response to the claim and the counterclaim, the oral and documentary evidence adduced through RW1, the Registrar, administration and human capital, and the written submissions by its counsel, as summarized hereunder.
24. In the response to the claim the respondent to a large extent does not dispute the basic facts as pleaded and presented by the claimant as summarized above. However, the respondent's position is that after the claimant was appointed as the director, resource mobilization and investment she ceased to be a member of the board and as such could not earn the allowances attached to her former position of the finance officer. It is stated that the claimant could only earn allowances payable as per her new position and designation excluding those payable to members of the board.
25. The respondent pleaded that it was after an audit was carried out that it was discovered and revealed that the claimant had irregularly continued to earn excess allowances after she was removed from the board and that after the audit report the board met on February 24, 2021 and resolved to stop the said irregular payments. Consequently, the respondent issued the letter of February 25, 2021 informing the claimant of the downgrading of the allowances payable to her with effect from March 1, 2021.
26. The respondent has counter-claimed against the claimant seeking that she refunds all the monies paid to her in purportedly irregular and excess allowances to which she was not entitled to. It is not denied that the claimant was not consulted prior to the decision to redeploy her and before the decision made to withdraw the subject allowances.
27. RW1 testified along the foregoing pleadings insisting that the claimant should not continue drawing and earning the irregular allowances as she is no longer a member of the board. He emphasized that the claimant should be ordered to refund all that had been irregularly paid to her since her redeployment hence the counter-claim by the respondent. He produced all the filed documents as respondent's exhibits.
28. It is on the basis of the foregoing that the respondent prays that the claimant's cause be dismissed with costs and the counter-claim be allowed with costs. The submissions by counsel for the respondent shall be considered in the succeeding parts of this judgment alongside those by counsel for the claimant.

Iv. Issues For Determination

29. This court has carefully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for both parties. From the above the court identifies the following issues for determination –
 - a. Was the unilateral decision by the respondent to reduce and or withdraw part of the claimant's remuneration in February, 2021 unfair and unlawful?
 - b. If (a) above is in the affirmative is the claimant entitled to the reliefs prayed for?
 - c. Is the respondent entitled to the reliefs sought for in the counterclaim?
 - d. What orders are appropriate for costs in the main cause and in the counterclaim?



V. Change Of Terms Of Employment?

30. The issue in contest between the parties is rather a straight forward. Without the necessity of repeating the contents of the pleadings and the oral and documentary evidence by the parties, the claimant was engaged as a finance officer on May 16, 2011, which position automatically qualified her to be a member of the board. For that reason and by virtual of her position she enjoyed some allowances which are enhanced in value compared to those she would purportedly draw if she was not a member of the board.
31. On November 12, 2018 the claimant was redeployed as the Director, Resource Mobilization and Investment, on the same terms of employment as she enjoyed as the finance officer, and she was subsequently confirmed in that new position. It is not contested that the claimant continued to enjoy the same terms and conditions of employment in terms of remuneration except for the job description and title. Of course, she had a new set of roles and duties as spelt out in the letter of confirmation into that new position and she was no longer part of the board. This was until February 25, 2021 when she received a letter reducing her remuneration in the sum of Kshs 115,000/= purportedly due to allowances that were only payable when she was part of the board and which she had allegedly continued to enjoy irregularly.
32. The claimant approached the court when her appeal to the board and the council to reconsider the reduction was denied. As stated elsewhere in this judgment the said part of the remuneration was reinstated by the court vide an interim order pending the hearing and determination of this cause.
33. It is illustrative to note that in her correspondences with the respondent, as reproduced elsewhere in this judgment, the claimant protested her redeployment emphasizing that she had been vetted by the authorities and found fit and cleared to continue serving in her capacity as the finance officer of the respondent. That vetting and clearance is neither denied nor doubted by the respondent and the same is admitted in the correspondences exchanged between the parties and the same is authenticated by documentation from the National Treasury and Planning in a letter dated October 23, 2018 which was among the exhibits produced by the claimant.
34. It is however important to appreciate that the respondent retained the right to deploy and even redeploy the claimant as it pleased based on the needs of the institution and this court has no mandate in interfering with the internal human resource management of the respondent unless such a matter is brought to court for adjudication. The redeployment of the claimant is not one of the issues that this court has been called to adjudicate upon in this cause. However, it is germane to note that the respondent is a public institution that operates at the expense of the taxpayer. The claimant was vetted and cleared to serve as a finance officer which in view of this court gave her a vote of confidence and trust for the respondent to retain her in that sensitive position that requires utmost honesty, integrity, and fiduciary probity. During the hearing the court inquired from RW1 if the employee who took over from the claimant as finance officer had been vetted and cleared and the answer was in the negative. Be that as it may, and without prejudice, it would have made sense for the respondent to have retained the claimant as finance officer after she had been vetted and cleared by the authorities.
35. Although she had no alternative after her appeals were declined, it is not farfetched to state that the claimant took up the new appointment with some degree of dissatisfaction and protestation as she felt her skills should have been better utilized as the finance officer and she stated as much in her letter of appeal cited and reproduced in an earlier part of this judgment. However, she was pacified by the assurance from the respondent that “all your terms of employment remain the same.”



36. During the hearing in court RW1 did not inform the court as to what terms of employment for the claimant were to remain the same and which ones were to change, if at all, other than the new role, duties, the designation, and title. And to confirm that the remuneration of the claimant was not to be affected by the redeployment the respondent continued to pay to the claimant the same salary and allowances (remuneration) as it did when she was the finance officer for the duration from November 12, 2018 to February 25, 2021, a period of over two years. The claimant was neither consulted nor notified or given a hearing before the alleged decision to alter her remuneration was taken.
37. The respondent alleges that the purported irregular payments to the claimant were discovered following an audit report and that the board subsequently met and resolved to discontinue the monthly payments amounting to Kshs 115,000/=. It is amazing that the respondent did not provide the court or the claimant with the purported audit report and the minutes of the alleged meeting of the board wherein it was allegedly resolved that the payments be discontinued and that the monies paid to the claimant over the period of two years or so be recovered. RW1 was questioned on this issue by counsel for the claimant but offered no explanation or reason as to why the audit report and the minutes were not availed in court but he admitted that they were very essential documents and material in this cause.
38. There can only be two logical reasons for the respondent's failure to avail and supply the claimant and the court with the said two documents. One, it is possible that no such audit report and minutes exist for the reason that no such audit was ever carried out and no such meeting ever took place. Two, if such audit report was ever prepared it did not make or recommend as alleged and if there was ever held such a meeting of the board as alleged it did not recommend as purported by the respondent, or at all. It should not be lost that the respondent is a public institution that should be managed on a platform of utmost good faith, transparency and accountability, in accordance with established policies, guidelines, and the law and the Constitution in order to properly and adequately justify and account for the public resources utilized at the expense of the taxpayer.
39. Further, article 41 of the Constitution enjoins the respondent to afford and accord its employees fair labour practices and further article 47 enjoins the respondent to only take administrative actions against its employees in an expeditious, efficient, lawful, reasonable, and procedurally fair manner. This right is expounded under the various provisions in the Fair Administrative Action Act. As a public institution the respondent is enjoined to values and principles of public service as provided for in article 232.
40. Section 2 of the Employment Act (the Act) defines remuneration to mean "the total value of all payments in money or in kind, made or owing to an employee arising from the employment of that employee". It is not debatable that remuneration is one of the foremost terms of a contract of employment and sections 7, 8, 9, and 10 of the Act fortify this position.
41. In the considered view of this court that, and it is hereby so held, when the respondent promised to the claimant and undertook to apply the same terms and conditions of employment upon her redeployment, what the respondent meant is that except for the new designation all the other terms and conditions of employment remained the same and more so remuneration which includes the allowances. In confirmation of that position the respondent continued to meet the agreed remuneration for over two years until that unfortunate letter that purported to reverse the same resulting in this cause. In line with section 10(2)(h) of the Act the respondent upon redeployment confirmed to the claimant that her "remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits" remained the same.



42. Having taken that position and given the assurance to the claimant on the same in word (writing) and deed the respondent is estopped from retracting or unilaterally changing the same. The assurance and the undertaking by the respondent reasonably gave to the claimant a good ground and basis for legitimate expectation of regular and interrupted payment of her monthly remuneration and she accordingly planned and fashioned her financial trajectory dependent thereon.
43. In *Communication of Kenya v Royal Media Services Ltd & 5 others* (2014) eKLR the Supreme Court outlined the ingredients of the principle of legitimate expectation as –
- “The emerging principles may be succinctly set out as follows:
- a. there must be an express, clear and unambiguous promise given by a public authority;
 - b. The expectation itself must be reasonable;
 - c. The representation must be one which it was competent and lawful for the decision-maker to make; and
 - d. There cannot be a legitimate expectation against clear provisions of the law or the *Constitution*.”
44. Counsel for the claimant has cited the above decision alongside the sentiments of the court in *Republic v Kenya Revenue Authority Ex Parte Cooper K-Brands Limited* (2016) eKLR which relied on De Smith, Woolf, and Jawell “*Judicial Review of Administrative Action*” 6th Edition.
45. This court agrees with counsel for the claimant in that the respondent, a public institution, gave to the claimant an express, clear, and unambiguous promise; the expectation created thereby to the claimant was reasonable; the respondent as the employer had the lawful capacity and competence to make the representation as the decision maker; and the said representation was neither unlawful nor unconstitutional. Further, there is no policy or guideline that has been availed that was violated by the respondent in making the said promise.
46. In absence of the alleged audit report and the minutes of the board it is the view of this court that it is the VC and or RW1 who wrongfully, unilaterally, un-procedurally, unfairly, and unlawfully purported to vary and change the terms of employment of the claimant. The respondent is a public institution that should be run and managed on sound public policy based on rule of law as opposed to whimsical, capricious, individual targeted actions, and or malicious tendencies.
47. The argument by counsel for the respondent that the withdrawal of the said allowance did not amount to unfair labour practice and the unilateral changing of the terms of employment does not hold any water in view of the legal definition of remuneration as discussed above. Clearly, remuneration includes wages, salary, allowances, and any other monetary compensation that is due and payable to an employee by virtual of the employment relationship with an employer.
48. Flowing from the foregoing, this court holds that the action by the respondent to stop payment of all the allowances due and payable to the claimant, based on the aforesaid promise and undertaking, was wrong, unfair, and unlawful for the following reasons. Foremost, there is nothing on record confirming that an audit was ever carried out that allegedly declared the payments irregular or unlawful. No explanation was given as to why the alleged audit report was not availed to the claimant and to this court. It is in the considered view of this court that no such audit was carried out as alleged and no audit report was prepared for the non-existent audit. There are no minutes availed confirming indeed



that there was a board meeting that resolved that the payments be stopped and that what was already paid to the claimant be recovered. It is logical to conclude that no such resolution was ever made and no such meeting ever took place. It seems that it is the VC and or RW1 who decided to engage in a personal pursuit to take the wrongful, unfair, unlawful action without the consent and or approval of the respondent. That is against the values and principles of public service and good public management and governance of public institutions as alluded to in an earlier part of this judgment. This cannot pass the scrutiny of this court.

49. Further, the claimant was neither contacted, informed, nor interviewed before the decision was made. This conduct by the respondent is against the constitutional and statutory provisions on fair administrative action cited in an earlier part of this judgment.
50. Clearly and evidently, the action by the respondent is against fair labour practices as envisaged under article 41 of the Constitution and other provisions of the law, and in particular section 13 of the Act wherein an employer should not vary the terms of employment of an employee, including remuneration, without consulting, informing, and giving such an employee a hearing in due process – See Elizabeth Kwamboka Khaemba v BOM Cardinal Otunga High School Mosochi & 2 others (2014) eKLR and Jackson K. Berege v Masai Mara University (2015) eKLR.
51. The court is inclined to pose this rhetorical question – does it mean that the respondent did not carry out audits, internal or otherwise, for the financial years 2018/19 and 2019/20 such that the alleged irregular payments were only detected in February, 2021? If the answer is in the affirmative, then, it portrays the respondent as a public institution in dire need of public scrutiny and auditing. Otherwise, if the alleged payments to the claimant were irregular and unintended there is no way that the same should have gone undetected for a period of over two years. I say no more on this aspect but it suffices to state that the action by the respondent was completely wrong, unfair, and unlawful and hence calls for the intervention of this court.
52. Of course, it is not the duty of the respondent to help or aid the claimant in making her financial planning and decisions. However, it is commonsense that people plan and make their financial decisions based on the anticipated or expected income. The claimant poured out on the financial obligations and commitments she has made and meets based on her remuneration. While that is not the primary consideration by this court in making its decision, it exemplifies what is expressed and comprised in legitimate expectation and the very serious consequences and impact that the action by the respondent should have beyond the personal plight of the claimant. Fairness or justice goes beyond lawfulness of an action. Every administrative action ought to be reasonable, equitable, overboard, transparent, accountable, and in utmost good faith – See Elizabeth Wacheke & 62 others v Airtel Networks (K) Ltd & another (2013) eKLR.
53. It is not lost on this court that the claimant is the pioneer Director, Resource Mobilization and Investment and hence there is no precedent on what was paid to any other employee who held that position. It is the opinion and finding of this court that the respondent intended the holder of that new office to enjoy the same terms as those of the finance officer. That is what the respondent promised to the claimant and undertook to pay hence creating legitimate expectation on the part of the claimant who continued to enjoy those terms for the next two years and two months prior to the misguided unilateral action by the respondent that gave rise to this cause.
54. The court has said enough in demonstrating that the unilateral decision and action by the respondent in February, 2021 to reduce and or stop paying to the claimant all her remuneration as paid hitherto is wrongful, unfair, and unlawful.



Vi. The Counterclaim

55. Having concluded that the unilateral action by the respondent purporting to stop payment of part of the claimant's remuneration or reducing the same was wrongful, unfair, and unlawful there is no need of a lengthy submission by this court in coming to the obvious conclusion that the counterclaim by the respondent has no merits.
56. The counter-claim is for recovery of all monies paid to the claimant for a period of over two years in payments that the respondent purports were irregular and hence amounting to overpayment in the sum of Kshs 2,645,000/= as of February, 2021. For reasons that are by now so obvious and clear the counter-claim lacks merits and is hereby dismissed.

VII. Reliefs

57. Having found and held as above the court shall now consider each of the reliefs sought by the claimant as follows. The reliefs were set out in the introductory part of this judgment. Prayer (a) is for a declaration that the unilateral reduction of the claimant's remuneration in February, 2021 was unlawful and unfair. Without the need of repeating the reasons therefor the court has already concluded and held that the unilateral decision and action by the respondent was wrongful, unfair, and unlawful. It is so held and hereby declared.
58. Prayer (b) is for a declaration that the unilateral reduction of the claimant's remuneration amounts to unfair practices. The court has declared the unilateral action by the respondent wrongful, unfair, and unlawful. The denial for fair remuneration is unfair labour practice under article 41(2)(a) of the Constitution and other various provisions of the Act as cited in the foregoing parts of this judgment. Yes, the unilateral action by the respondent is wrongful, unfair, and unlawful and the same amounts to unfair labour practice and it so hereby declared.
59. Prayer (c) is for an order reinstating as from March, 2021, the payment of the sum Kshs 115,000/= per month that had been deducted. This court issued an interim order on February 21, 2021 reinstating the said monthly payments pending the hearing and determination of this cause. The said order is hereby confirmed.
60. Prayer (d) is for an order prohibiting the respondent from unilaterally changing the terms of employment of the claimant. The court has declared the unilateral action by the respondent as wrongful, unfair, and unlawful. Consequently, the respondent is hereby prohibited from unilaterally changing the terms of employment and engagement of the claimant.
61. Prayer (e) is that the claimant's terms be retained as they were when she was serving as the finance officer. This is what the respondent promised and undertook to do and indeed complied for over two years. Flowing from all that has been said in the foregoing contents of this judgment the claimant's terms and conditions shall remain the same as they were when she was the finance officer subject to annual increments and other improvements.
62. Logically and consequentially, prayer (f) is granted injuncting the respondent from unilaterally reducing the remuneration due and payable to the claimant in line with the foregoing orders.
63. Prayer (g) is for damages for unfair labour practices. Ordinarily, the damage that an employee suffers from wrongful, unfair, and or unlawful termination or unfair labour practice is the remuneration, wages, or salary lost which the employee should have earned were it not for the unlawful action by the employer. The claimant came to this court as soon as she realized that the respondent was not yielding to her requests that her remuneration be paid in full without the undue deductions. The court issued



interim orders and it was confirmed that the respondent indeed complied therewith and paid to the claimant all the arrears. The respondent has continued to pay in compliance. In the view of this, as much as the respondent subjected the claimant to unfair labour practices, the court shall for now spare the taxpayer the pain of paying for the wrongful, unfair, and unlawful actions of some officers of the respondent who failed, refused, and or neglected to follow the law in pursuit of what appears to be a targeted personal venture against one of its own long serving employees.

64. Prayer (h) is denied as there are no particulars given in guiding the court on for how long the pay was withheld and the quantum thereof as to logically enable a justifiable calculation of the interest payable. The submissions by claimant's counsel have not shed light on this and it is wrong for this court to speculate on the same.

Viii. Costs

65. Costs follow event and the claimant is awarded costs of this cause and those of the dismissed counterclaim.

Ix. Disposal

66. In final disposal of this cause, this court issues the following orders: -
- a) A declaration be and is hereby issued that the unilateral reduction of the claimant's remuneration in February, 2021 was wrongful, unfair, and unlawful and that the same amounts to unfair labour practice.
 - (b) An order be and is hereby issued compelling the respondent to reinstate with effect from March 1, 2021 the sum of Kshs 115,000/= per month which was wrongfully, unfairly, and unlawfully deducted from the claimant's remuneration.
 - (c) An order be and is hereby issued restraining the respondent from unilaterally changing the terms and conditions of employment of the claimant including her remuneration and that the same be retained as when she held the position of the finance officer subject to annual increments and other improvement thereon.
 - (d) The claimant is awarded costs of this cause and those of the dismissed counterclaim.

DATED, SIGNED, AND DELIVERED VIRTUALLY, AT NAKURU THIS 21ST DAY OF SEPTEMBER, 2023.

DAVID NDERITU

JUDGE

