



**Koskei v Brandlife Kenya Limited (Cause 315 of 2020)  
[2023] KEELRC 2647 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2647 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 315 OF 2020  
MN NDUMA, J  
OCTOBER 19, 2023**

**BETWEEN**

**ANNE KOSKEI ..... CLAIMANT**

**AND**

**BRANGLIFE KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant was employed by the respondent as a County Manager by a letter dated 3/10/2018 at a monthly salary of Kes 400,000 per month. The appointment was effective on 15/10/2018. The remuneration of the claimant included, a 10% payment of the net profit of any new business brought in by the claimant upon the company being paid by the claimant and a profit sharing scheme put in place effective from January, 2014. This was based on achievement in excess of company turnover and profit objectives. In addition, the claimant was entitled to 21 working days annual leave.
2. The claimant was placed on six (6) months' probation. After completion of probation, termination notice applicable was two (2) months' notice. On 23/5/2019, the claimant received a letter of confirmation after a successful probation period. The respondent congratulated the claimant on her achievements thus far.
3. The claimant (CW1) testified that prior to joining the respondent, she had a rich and successful work experience spanning over 15 years at Resolution Insurance (E.A. Limited); Kenya Airways Limited and Ebony Brands and Marketing Limited.
4. CW1 stated that she performed very well during her tenure with the respondent and her continuous appraisal records up to 30<sup>th</sup> April, 2019 show that.
5. However, on 24/3/2010, CW1 testified she was issued a notice to show cause and was charged with three offence's including:-



- (a) Dishonesty and gross negligence leading to loss of income.
  - (b) Poor staff management and
  - (c) Insubordination.
6. The claimant was then sent on compulsory leave for 7 days and was to show cause why her employment should not be terminated. C.W.1 testified that her contract did not have a provision for compulsory leave. C.W.1 was then summoned to an oral hearing to take place on 31/3/2020. Meanwhile C.W1 wrote to the respondent requesting for documents in possession of the respondent in support of the charge and for further and better particulars. The respondent declined to provide the documents.
  7. That on 8/4/2020, eight (8) days after the oral hearing , C.W.1 received a letter of termination and reasons given for the termination were for being – Dishonest by misrepresenting to the Group Managing Director the total billing approved by the claimant for the project and profit margin thereof. And failure to give a satisfactory account as to the expenditures incurred and profits realized as well as failing to give timely financial updates to allow smooth operations and insubordination by alleging that C.W.1 disobeyed the lawful instructions of the Managing Director leading to a breakdown of work flow.
  8. C.W.1 testified that she was discharged with regard to the offence of mismanagement.
  9. C.W.1 disputed the validity and fairness of the reasons for termination given. The alleged misrepresentation related to a project executed honestly and transparently by the claimant within her mandate as a Country Manager. That on 30/1/2020, C.W.1 had informed the Managing Director about the approved budget by the claimant of USD 59,598.63 way before the commencement of the project. C.W.1 then proceeded to execute the project and incurred expenditure in strict compliance with the approved budget and occasioned no loss at all to the respondent. That no such alleged loss was proved by the respondent. That it was not true as alleged by the respondent that C.W.1 only informed the organization of the actual approved budget of the claimant when 95% of the project expenses had been effected.
  10. C.W.1 denied ever having misrepresented the profit margin expected from the said project at 33% or 17% as alleged in the Notice to Show Cause. That the allegation conveniently omitted to factor in a supplementary budget of USD14,020.46 which the Managing Director was fully aware of and which made the total approved cost of USD73,619.08 and a profit margin of 27% with no loss occasioned to the Respondent. C.W.1 stated that she gave a satisfactory account of the expenditure incurred and allegations made in this respect were false and not substantiated by the respondent. C.W.1 had made a comprehensive report on the expenditure on 21/3/2020 a fact admitted by the respondent before preferring charges against C.W.1 on 25/3/2020. That this was an irreconcilable paradox, well known to the respondent. C.W.1 was not made aware what parts of her report were unsatisfactory at the hearing, she testified further.
  11. C.W.1 stated that the respondent did not objectively consider her comprehensive report and that she was therefore unfairly treated and for no valid reasons given.
  12. C.W.1 further testified that no particulars of alleged insubordination; and breakdown of workflow were given. That this charge was hollow and without substance. That the charge cannot hold in the absence of a specific instruction issued to C.W.1 by the Managing Director, which she is alleged to have disobeyed. That there is no specific details in this regard in the notice to show cause capable of being responded to by C.W.1. That failure to provide the particulars when requested negated the entire disciplinary process and was therefore unfair. Furthermore, two notices to show cause were issued by



- the Managing Director in respect of the charge of insubordination first by email dated 19/2/2020 to which C.W.1 responded to and the charge was abandoned only to be revived by the Human Resource Manager on 25/3/2020 in another show cause letter.
13. That the respondent unfairly demanded that C.W.1 not only work for the respondent but also attend to the business of a sister company not based in Kenya. That C.W.1 objected to this overload not provided for in her contract of service and she was lawfully entitled to do so. The other company was called Imaginative Expressions Limited. C.W.1 testified that she could not be held accountable with regard to a project tendered for and fully executed by staff of Imaginative Expressions and in which project she was not involved at all. That this was the real reason for her victimization for sticking to the terms of her contract with the respondent.
  14. That the disciplinary process was unlawful and unfair and was conducted by one Mr. Ikechukwu Anoke whom the respondent had introduced as a lawful Director of the respondent. That neither C.W.1's supervisor nor the Human Resource Officer attended the purported disciplinary hearing which C.W.1 said was a sham and a ruse to get rid of her unlawfully. That indeed as at the date of the said hearing, the said Mr. Anoke was not a Director of the respondent as per the certificate of incorporation in terms of the *Company's Act* No. 17 of 2015. That the said Anoke is a director of Playgroup Limited where the disciplinary hearing took place. C.W.1 said she had no contract with Play Group Limited, and the company had no business to discipline or terminate her contract of employment.
  15. C.W.1 further testified that she was subjected to unfair treatment on account of her pregnancy having taken time off work due to pregnancy related complications which the respondent was well aware of at the time the respondent issued C.W.1 with a notice to show cause on 29/8/2018 that led to termination of her employment. That on 15/8/2019 to 15/11/2019 C.W.1 had proceeded on maternity leave and on 15/8/2019, the date she proceeded on maternity leave is the date she received the notice to show cause.
  16. C.W.1 said it was not a coincidence that she was targeted for termination because she was proceeding on maternity leave. That the respondent reduced the salary of claimant by half blaming her for not bringing in new business. That from 1/9/2019, her take home was Kes 240,000. That this reduction of salary was without agreement or consent of C.W.1. That the salary cut was unlawful and unfair especially at the time C.W.1 was proceeding on maternity leave. That bringing in new business was an incentive offered in the contract of employment and was not related to her fixed salary of Kes 400,000 already being enjoyed on account of managing the respondent as Country Manager. That the suit has merit and the Court to award C.W.1 as claimed.
  17. C.W.1 was subjected to very close cross-examination by Mr. Kinyua, Advocate for the respondent in which she insisted that she had a super experience and record as a manager with her previous employers and the respondent. C.W.1 denied having promised the Managing Director that she would turn around the business of the respondent in 3 months. C.W.1 denied that the respondent had experienced loss of business of USD 60,000 at the time as alleged by the Managing Director. C.W.1 said she disputed that such a loss existed verbally. C.W.1 highlighted challenges the company faced then including the COVID 19 pandemic; pricing and attachment of Certificates of compliance which led the respondent not to get tenders with certain clients. C.W.1 denied having consented to salary cut though possibility of salary cut had been discussed between her and the Managing Director with respect to other staff. C.W.1 admitted salaries were cut across the board and commission was increased from 10% to 30% to create incentive to bring new business. C.W.1 insisted that there were no particulars of insubordination given to her by the Managing Director or the Human Resource Manager.



18. C.W.1 also denied that she had gone on sick leave without informing Human Resource. C.W.1 explained she had emergency delivery but communicated her whereabouts as soon as she was able to. That she had already applied for maternity leave at the time. C.W.1 said she was not paid for the 7 days she was on sick leave. C.W.1 insisted that requested documents and particulars were not provided to her. C.W.1 added that the Managing Director had approved the budget she worked on in the subject project and she did not misinform or hide any information from him. She said initial estimates of profit was 30% but was later reviewed to 17%.
19. That Managing Director was always in copy of the processes and happenings in the execution of the project.
20. C.W.1 concluded that there was a separate budget of 59,000 USD and another of 14,000 USD which were approved separately and she had the approval of Managing Director to proceed at all material times. C.W.1 said the project was profitable and no losses were incurred by the respondent. C.W.1 also said that her financial and expenditure reports were clear and transparent. That she did not fail to account for any expenditure at all. That work was based on approved client budgets which the Managing Director was made aware of before commencement of the project and at every stage.

### **Defence**

21. The respondent called R.W.1, Julius Agenmonmen the Group Managing Director of the respondent.
22. R.W.1 testified that the claimant's performance was consistently unsatisfactory since inception as she failed to grow existent business in 3 months as she had promised hence his visiting the office in May, 2019. That upon the visit, R.W.1 wrote an email to C.W.1 expressing his disappointment but things did not change 3 months later.
23. That on 6/8/2019, R.W.1 wrote an email querying the loss of USD 60,000 between the months of January and July, 2019 and that C.W.1 had not met her deliverables as promised. That she had not only failed to bring in new business but had also failed to maintain old business.
24. That the respondent cited C.W.1 for disciplinary action on this failure and for absencing herself from office without authority in contravention of the Employees handbook and the *Employment Act*. That the claimant was fully remunerated for the 7 days she was absent from office without authority. That C.W.1 was given enough time to respond to the charges made against her in the notice to show cause dated 24/3/2020. That the claimant was given a fair hearing in the disciplinary hearing held on 31/3/2020 as per the minutes before Court.
25. That the disciplinary hearing was held by Mr. Ikechukwu Anoke, the company's representative and a director of the respondent. That C.W.1 did not name the documents not in her possession and declined opportunity for adjournment of the hearing to ventilate on any further issues she felt necessary. That C.W.1 did not draw a job bag stating the estimated budget and negotiate with client before the proforma invoice is raised; indicate the operational costs against the budget agreed to; indicate the profit margin and then submit the job bag to the Managing Director for review and approval before commencement of the project. The failure to follow this procedure led to the charges against her. That contrary to what C.W.1 said, in her email dated 30/1/2020, to the management, C.W.1 alleged that the total budget was USD 68,866.10 with a profit margin of 23% which was rejected by the respondent.
26. That in a subsequent mail dated 20/2/2020, C.W.1 readjusted the budget to give a profit margin of 33% and subsequently revised the same which had a profit margin of 35%. That R.W.1 released the funds based on this projection, he testified.



27. That C.W.1 did not make full disclosure on costs of the projects until two weeks into the project. That C.W.1 was as a result charged with dishonesty in getting the approval from the company on the budget. That C.W.1 admitted that full disclosure of expenditure was done much later and after the project was completed contrary to policy and procedure. R.W.1 said that it was proved in the disciplinary hearing that C.W.1 failed to give a satisfactory account as to the expenditure incurred and profits realized as well as failing to give financial updates to allow smooth operation. That C.W.1 had failed to exercise due diligence, care and attention and disregarded the need to carry duties assigned to her professionally.
28. R.W.1 stated that C.W.1 was aware that Imaginative Expressions Limited was a sister company and belonged to the respondent as demonstrated in the companies Memorandum and Articles of Association of which the claimant was custodian during her employment with the respondent.
29. That this was a business strategy and its operations were supported by the Respondent and so C.W.1 was obliged to support its work. That C.W.1 was a bank signatory of Imaginative Expressions Limited two weeks to her employment. That C.W.1 knew at all times that Imaginative Expression Projects were her responsibility. That Anoke became a director of the respondent on 27/1/2020 and on 31/1/2020 vide email he was introduced to C.W.1 as a director of the respondent. That he was an appropriate person to hear the disciplinary case against C.W.1 and the venue chosen was a neutral one chosen in good faith. That C.W.1 did not follow company policy in notifying of her pregnancy on time. That the pregnancy had nothing to do with her disciplinary case. It was a mere coincidence. That C.W.1 recommended salary cuts to mitigate company loss in an email dated 10/8/2019. That the respondent reduced C.W.1's salary by 40% to Kes 240,000 from Kes 400,000 per month. That the respondent had accepted the proposal by C.W.1 in an email dated 12/8/2019 and that the company then introduced commission from 10% to 30% in good faith. The respondent produced this arrangement by a letter dated 15/8/2019. That C.W.1 did not serve any demand letter on the respondent before filing this suit. That C.W.1 was paid her full dues upon termination and was given a certificate of service.
30. That the dismissal of the claimant was for a valid reason and the respondent followed a fair procedure in doing so.
31. R.W.1 was extensively cross-examined by Mr. Ogembo Advocate for the claimant. R.W.1 admitted during cross-examination that he was copied the amended budget of USD 59,598.65 in an email dated 30/1/2020 by C.W.1. He admitted that the project started on 10/2/2020. R.W.1 confirmed that there was a supplementary budget of USD 14,020. R.W.1 stated that the profit margin varied from 35% to 33% to 23% and then finally to 18% and that is why C.W.1 was charged for misrepresentation to Managing Director before the project was approved.
32. R.W.1 insisted that loss of income occurred since the final profit margin was 18% which was not good for business. R.W.1 admitted that he did not produce any statement of account before Court to demonstrate the alleged loss. R.W.1 said that C.W.1 had provided statement of account and reconciliation long after the project had ended. This was done late and should have been done within 48 hours after the project had ended. R.W.2 told Court that he could not remember the actual date insubordination occurred but it was between 17<sup>th</sup> and 19<sup>th</sup> February, 2020. That insubordination was not a reason for the dismissal. That this was reviewed after the hearing and some issues were discounted. R.W.1 stated that C.W.1 had taken over from someone who did not perform. That R.W.1 personally interviewed her and she was to be paid Kes 400,000 monthly salary and 10% commission on any new business brought to the company.
33. R.W.1 admitted that to bring in new business was not a mandatory requirement in the letter of appointment. R.W.1 admitted that C.W.1 got a salary cut after the respondent experienced loss of 60,000 USD. That this was 40% cut based on the recommendation of C.W.1. R.W.1 confirmed that



as per the payslip of August 2019, C.W.1 was paid a salary of 237,817 reflecting the 40% cut. R.W.1 stated that he did not attend the disciplinary hearing and the Human Resource department was not involved because the Director Human Resource is based in Nigeria. That only Mr. Anoke, the Director conducted the hearing. R.W.1 concluded that C.W.1 was dishonest on the profit margin of the job bag. That she kept vacillating from 35% to finally 18% which was not good for business.

34. R.W.2 Ikechukwu Arthur Anoke testified by adopting his witness statement dated 27/8/2020. He produced the respondent's bundle dated 27/8/2020 marked exhibits '1' to '25'. R.W.2 told the Court that he became a director of the respondent on 31/1/2020. That C.W.1 was aware of that and was duly notified by email. That R.W.2 visited the respondent's office regularly and engaged C.W.1 officially on operational matters. That this was before the disciplinary process began. R.W.2 said he conducted the disciplinary hearing alone. That he asked C.W.1 to bring her attorney and that the hearing would be recorded. That a copy of transcript was shared with the claimant. That C.W.1 was given seven (7) days to prepare for the hearing. R.W.2 said C.W.1 brought her advocate. R.W.2 said she gave C.W.1 a fair hearing. R.W.2 said C.W.1 had access to all relevant documents before the hearing.
35. That C.W.1 said she did not require more time to prepare for the hearing when R.W.2 offered her more time. That R.W.2 found C.W.1 guilty of the charges preferred against her and recommended her dismissal. That the termination was vide an email and the claimant was paid her terminal benefits and was provided with a Certificate of Service. The benefits included one month salary in lieu of notice; five (5) leave days because she could not carry over leave. The termination was in mid-April. That she had taken maternity leave the previous year but had not taken annual leave the previous year. That she had joined the respondent in 2018. That the dismissal was fair.
36. R.W.2 stated under cross-examination by Mr. Ogembo that he was not involved at all in the operations of the respondent including the project in question. R.W. 2 said he was not clear on all the issues raised against C.W.1 but gave her a fair hearing before reaching a decision. R.W.2 said he was not aware C.W.1 needed further documents to defend herself. R.W.2 said the office where the disciplinary hearing was held was neutral and that he was a director of the respondent and entitled to hear the case.
37. The parties filed written submissions which the Court has carefully considered together with the testimony by C.W.1, R.W.1 and R.W.2. The issues for determination are as follows:-
  - a. Whether the termination of the employment of the claimant was for a valid reason and whether the respondent followed a fair procedure in terminating the employment of the claimant.
  - b. Whether the claimant is entitled to the reliefs sought.

### **Deducted salary refund**

38. The Court will start by determining whether the claimant has proved on a balance of probability that the reduction of her monthly salary by 40% from Kes 400,000 to Kes 232,758 with effect from August, 2019 was in breach of the contract of employment between the claimant and respondent and therefore unlawful.
39. It is not in dispute that the claimant was employed vide a contract of employment dated 31/10/2018 with effect from 15/10/2018. In terms of the said contract of employment, the claimant was entitled to a monthly salary of Kes 400,000 a month and to 10% of the net profit of any new business brought in by the claimant.
40. It is not in dispute that the parties did not negotiate and or enter into any other employment agreement, signed by the parties. However, by a letter dated 15/8/2019, the respondent unilaterally reduced the salary of the claimant by 40% with effect from 1/9/2019. The salary slip produced by the claimant



shows that the cut was effected on 2/9/2019 by the respondent depositing a sum of Kes 232,758 to the claimant's bank account instead of the net sum of Kes 400,000.

41. The claimant's salary was therefore reduced by a monthly sum of Kes 167,242. It is not in dispute that the reduction was effected for the subsequent eight (8) months until the employment of the claimant was terminated by a letter dated 8<sup>th</sup> April, 2020. The total deductions for the period amounts to Kes 1,280,000 which the claimant claims in this suit.
42. The respondent vide the testimony of R.W.1 testified that even though the parties did not vary the contract of employment between the parties, the claimant had tacitly agreed to have her salary increased by making a general proposal to the respondent vide an email dated 6/8/2019 when the respondent wrote to the claimant requiring her to respond on how the respondent would immediately reduce its costs of Operations due to the difficult financial times the respondent was experiencing at the time. R.W.1 testified that the claimant responded vide a letter dated 10/8/2019 giving various options which the respondent could use including sub-letting the office space and re-consider the staff salary in general.
43. R.W.1 stated that this response was interpreted by the respondent to mean her consent or agreement to have her salary cut. The Court notes that the aforesaid communication was between the Group Chief Executive officer and the Country Manager at a strategic level on how to minimise the cost of running the respondent to mitigate the low business the respondent was experiencing at the time.
44. This was followed by the letter by the respondent to the claimant dated 15/8/2019 which read as follows:-

“ You will recall that bringing in new business was one of the agreed deliverables before your employment. This has clearly not happened after about 10 months. Given the above as earlier suggested by you and confirmed by me in my response to your email, there will be a cut in your monthly take home pay which currently stands at USD 4000.”
45. Firstly, the contract of employment only offered the claimant an incentive of 10% commission on any new business she brought to the company. It was not a condition precedent for the claimant to bring new business to the company for her to earn the Khs.400,000 monthly salary.
46. The interpretation given to this clause of the contract by the respondent was wrong, far-fetched and a breach of a fundamental clause of the employment contract, which would have otherwise entitled the claimant to repudiate the same. The claimant however continued to observe the terms of her contract and continued to work despite the unilateral and unlawful breach of the employment contract by reducing her monthly salary from Kes 400,000 to Kes 232,758 per month. The claimant has proved that this deduction was unlawful and a blatant breach of the contract of employment and the Court finds so.
47. The Court finds that the claimant is entitled to full refund of the salary deducted from her salary from 2/9/2019 until the date of separation with the respondent in the sum of Kes 1,280,000.

### **Payment in lieu of leave**

48. R.W.2 admitted in his testimony that the claimant had not taken annual leave in the year 2019 because she had instead taken maternity leave. R.W.2 told the Court that the respondent had paid the claimant in respect of five (5) leave days outstanding in the year 2020 since the termination was in the month of April, 2020 and the claimant could not carry over leave days not taken in the year 2019.



49. The interpretation given to the matter by the respondent was in violation of section 37 of the Employment Act, which entitles an employee to at least 21 working days leave for every completed year of service. Accordingly, it was unlawful for the respondent to fail to pay the claimant in lieu of leave days not taken in the year 2019. Therefore, the Court awards the claimant Kes 279,993 in lieu of 21 days not taken in the year 2019.

#### **Payment in lieu of Notice.**

50. R.W.2 in his testimony told the Court that the respondent paid the claimant one month salary in lieu of notice upon termination. The contract of employment between the parties expressly provided for two (2) month salary in lieu of notice upon confirmation of employment. The respondent owes the claimant, one month salary in lieu of notice in the sum of Kes 400,000 and the same is granted by the Court.

#### **Termination**

51. In section 43(1) of the Employment Act, it is provided that:-

Proof of reason for termination

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

52. In the letter of termination dated 8/4/2020, the respondent gave reasons for termination to be:-

- (i) The Directors found the claimant dishonest by mis-representing to R.W.1 the total billing approved by the client for the project and the profit margins thereof and that the claimant failed to give a satisfactory account as to the expenditures incurred and the profits realized as well as failed to give timely financial updates to allow smooth operation.
- (ii) The Directors found that as alleged, the claimant was guilty of insubordination and willfully disobeyed the lawful instructions of R.W.1 leading to a break of work flow.

53. These two charges said to have been proved against the claimant led the respondent to conclude that the claimant did not exercise due diligence, care and attention in her duties as required in her contract of employment hence the decision by the directors of Brandlife Limited to terminate the contract of the respondent.

54. With regard to the charge of insubordination, despite request by the claimant to be provided with the precise instruction by R.W.1, that was not obeyed by C.W.1 to warrant her being found guilty of the offence, no such particulars were provided in the notice to show cause nor at the disciplinary hearing conducted by Mr. Anoke, a Director of the respondent. R.W.1 under cross-examination was not able to provide the specific instructions that were intentionally disobeyed by the claimant to warrant the charge of insubordination. In fact R.W.1 told the Court he could not even recall the exact day the insubordination took place but only referred to a period on diverse dates. R.W.2 on the other hand contradicted the testimony by R.W.1 and the contents of the letter of termination by telling the Court that respondent did not find the claimant guilty of insubordination.

55. The Court finds that the respondent did not prove to the Court that the claimant was guilty of the offence of insubordination. The respondent did not satisfy therefore the requirements under Section 43(3) and (2) as read with section 45 with regard to this specific charge.



56. With regard to the first charge, the claimant adduced very lucid evidence supported by documentation that at all times, during the tenure of the project the subject of this case, the claimant communicated to RW1 and obtained his approval to proceed with the project based on the initial budget given by the claimant and the supplementary budget that was later added by the claimant. The respondent through R.W.1 failed to prove that the claimant acted unilaterally and without approval by the respondent in the execution of the project the subject of this case. After all the claimant was the Country Manager and had full mandate to implement the projects duly proposed by her to the respondent *vide* R.W.1 and upon approval to proceed with the implementation.
57. The court finds that the claimant did not mis-represent the expected profit margin but only gave reasonable projections based on the expenditure incurred during the execution of the project. R.W.1 confirmed that at the end, the respondent got 18% profit margin on the capital expenditure on the project.
58. R.W.1 was unable to prove that any loss was incurred by the respondent in respect of this project, except lamenting that a profit margin of 18% was not good enough and was unacceptable. Clearly, the claimant was maliciously blamed for matters beyond her control and was wrongly, without any prove accused of having caused the company a loss of USD 60,000.
59. Accordingly, the Court finds that the respondent had no valid reason to terminate the employment of the claimant. No reasonable employer would have terminated the employment of its Country Manager on such flimsy and unproven grounds.
60. Furthermore, the respondent failed to constitute a proper committee of the Board to hear the disciplinary case against the claimant. The claimant being the Country Manager of the respondent could not be subjected to a hearing by a single person who admitted before Court he was removed from the day to day operations of the respondent, was a new director of the company and not well-versed with the matters raised by R.W.1 against the claimant.
61. The conclusion in the letter of termination that the director of the respondent had found the claimant guilty upon granting her a fair hearing is without basis. There was no proper and fair disciplinary process initiated against the claimant. The claimant was simply subjected to a one on one session with a director who did not have relevant information to deal with the allegations made, unfairly against the claimant.
62. The Court finds that the respondent also failed to satisfy the requirements of section 41 of the [Employment Act](#) in the disciplinary process that lead to unlawful and unfair termination of the employment of the claimant. The Court relies on the case of [Walter Ogal Auro v Teachers Service Commission](#) [2013] eKLR to find that the respondent failed both the substantive and procedural test set out under section 41, 43 and 45 of the [Employment Act](#). The Court therefore finds the termination of the employment of the claimant was not for a valid reason and the respondent did not follow a fair procedure.
63. The claimant is entitled to compensation in terms of section 49(1) (c) and (4) of the Act. In this respect, the claimant lost a very senior job with good career prospects unlawfully and unfairly. The claimant was subjected to unfair disciplinary process whilst she was pregnant and about to give birth. The claimant was admonished even for taking 7 days sick off to attend to emergency complications. The attitude displayed by R.W.1 towards the claimant was inhuman and wanting and failed to give due consideration to the claimant's condition at the time. The fact that the notice to show cause was given to her the same date she took maternity leave is an aggravating circumstance in this matter. The respondent failed to honour the contract of employment by reducing the salary of the claimant by



40% while she was expectant and due to go on maternity leave. The respondent also did not honour the two months' termination notice provided in the contract of employment. The claimant suffered anguish and psychological torture by being subjected to this unlawful process culminating in unlawful termination during her immediate postnatal care period.

64. The Court finds that at the time of confirmation of her appointment after six (6) months, the respondent was full of praise of the performance of the claimant. R.W.1 admitted that the claimant had replaced a non-performer but quickly embarked on a pattern that was bent to destroy her career and employment record.
65. The claimant was not compensated for the sudden job and then income loss and was clearly subjected to humiliating and condescending conduct by R.W.1 and R.W.2. The Court has considered similar cases of *John Githumbi Munge v Alfajiri Company Ltd* - Cause No 138 of 2015 [eKLR] and Cause No 2028 of 2016 - *Onesimus Mbiti Muia v David Engineering Ltd* and found this to be an appropriate case to award the claimant the equivalent of five (5) months' salary in compensation for the unlawful and unfair dismissal despite the fact that the claimant had served the respondent for a period of one year and five (5) months between 15/10/2018 and 8/4/2020 in the sum of Kes 2,000,000 (Two Million Kenya Shillings).
66. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-
- (a) Kes 400,000 in lieu of one month notice.
  - (b) Kes 279,993 in lieu of 21 days annual leave.
  - (c) Kes 1,280,000 being arrear salary not paid from 2/9/2018 to 8/4/2019.
  - d. Kes 2,000,000 compensation.  
Total amount: Kes 3,959,993.00
  - d. Interest at Court rates for (a) (b) and (c) above from date of termination till payment in full and from date of judgment in respect of compensation in (d) above.
  - d. Costs of the suit.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearance**

Mr. Ogembo for claimant

Ms Kinyua for respondent

Ekale – Court Assistant

