



**Miriti v Co-operative Bank Kenya Limited (Cause 1215 of 2018)
[2023] KEELRC 2452 (KLR) (13 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2452 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1215 OF 2018
J RIKA, J
OCTOBER 13, 2023**

BETWEEN

CAROLINE GAKII MIRITI CLAIMANT

AND

THE CO-OPERATIVE BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim through her trade union, Banking, Insurance and Finance Union [BIFU] on 18th July 2018.
2. She avers that she was employed by the Respondent Bank in July 2011, as a Graduate Clerk. She was posted to Kiambu Branch as a Teller, and moved to Tom Mboya Street Nairobi, on 24th October 2011.
3. Her position at Tom Mboya Branch, was Micro-Credit Officer. This role involved lending out small loans, customer service, loan recovery and opening of bank accounts.
4. She worked at the Tom Mboya Branch until 6th July 2017, when she avers, the Respondent terminated her contract unfairly and unlawfully, on account of alleged unsatisfactory performance.
5. She was hospitalized over pregnancy complications at Nairobi Hospital, in November 2015 and 7th March 2016. She delivered on 7th March 2016.
6. She took her 3-month maternity leave, combined with 1-month annual leave, which ended in July 2016.
7. On 29th September 2016, she received a letter from the Respondent, inviting her for Performance Improvement Programme [PIP] Review, regarding quarter 1 and 2, a period of 4 months covering March, April, May and June 2016.



8. She explained at the meeting that she was in and out of hospital during part of the period under review, and on maternity and annual leave for the rest of the period. She could not perform her duties optimally, due to maternity and post-maternity challenges.
9. She received a second invitation on 28th February 2017, for Performance Improvement Programme Review meeting, relating to the full year 2016.
10. She subsequently received a warning letter dated 15th May 2017, advising that the Respondent was considering terminating the Claimant's contract on account of unsatisfactory performance.
11. On 6th July 2017, her contract was terminated on the ground that her performance for 2 consecutive quarters in 2016 and quarter 1 in 2017, was unsatisfactory.
12. Her last gross monthly salary was Kshs. 113,401.
13. She appealed against termination decision on 5th September 2017. There was no response.
14. The Claimant's trade union reported a trade dispute to the Cabinet Secretary for Labour, on 19th December 2017. The Conciliator under the Ministry of Labour, heard both Parties, found that termination was unfair, and recommended that the Claimant is paid her terminal dues in accordance with the prevailing CBA, and 8 months' gross salary in compensation for unfair termination.
15. She avers that placing her of PIP during the period of pregnancy complications and maternity leave, amounted to discrimination on account of pregnancy.
16. She prays for Judgment as follows: -
 - a. Declaration that termination was unfair, unlawful and invalid.
 - b. Reinstatement without loss of benefits, seniority and status.
 - c. Notice at Kshs. 113,401, annual leave and pro-rata leave.
 - d. 12 months' salary in compensation for unfair termination.
 - e. Lost salary and allowances from the date of termination to the date of Judgment.
 - f. Damages for mental anguish, ruined profession, lost earnings and unfair treatment.
 - g. Interest.
 - h. Costs.
17. The Respondent filed its Statement of Response and Counterclaim, on 25th September 2016. It is conceded that the Claimant was an Employee of the Respondent. Her contract was terminated fairly and lawfully. She was not victimised on account of her pregnancy.
18. She was invited before the Review Panel on 5th October 2016. Her performance for the first 2 quarters in 2016 was below par, despite undergoing relevant coaching.
19. She was allowed to tender documentary evidence, and call witnesses during the meeting. She was accorded time to improve after the meeting. She was advised that further review would take place in November 2016. She did not turn around her performance, even after extension of the PIP.
20. She attended another review meeting on 6th March 2017. She was reminded, that an Employee's contract is terminated for being rated unsatisfactory for 2 consecutive quarters, after being placed on PIP.



21. The Claimant undertook to achieve a performance rating of not less than 83% for the first quarter of 2017, which she did not achieve.
22. She attended review meeting on 20th June 2017. She was again allowed to tender documentary evidence and call witnesses to show that her performance had improved.
23. She attended the meeting in the company of James Maina, a trade union representative. She and her representative admitted that her performance was not good. The Respondent offered to attach her to Teresiah Maina, Branch Manager Kawangware, for support and mentorship, in a bid to improve performance. The Claimant declined the offer.
24. Her contract was terminated as pleaded. She lodged an appeal which was considered and declined through a letter to the Claimant, dated 18th September 2017.
25. She did not adduce evidence at the review meeting, to show that unsatisfactory performance, was as a result of pregnancy complications.
26. The Respondent counterclaims from the Claimant, outstanding loans comprising personal loan at Kshs. 491,666; residential property loan at Kshs. 1,381,306; and laptop loan at Kshs. 47,218 – total Kshs. 1,920,190.
27. Interest on these loans, is counterclaimed at prevailing commercial rates, from the date of termination.
28. The Respondent prays the Court to find that termination was fair and lawful; dismiss the Claim; allow the Counterclaim; with costs and interest to the Respondent.
29. The Court has not seen any response filed by the Claimant to the Counterclaim. There is nothing said by the Claimant in her closing submissions, concerning the Counterclaim. The Respondent submits at paragraph 69 of its closing submissions that the Claimant did not file a Statement of Response to the Counterclaim.
30. The Claimant gave evidence on 30th June 2022, and 24th November 2022 when she rested her case. The Respondent's Head of Employee Relations and Welfare, Leah Kerich, gave evidence for the Respondent on 7th March 2023 when the hearing closed.

Evidence.

31. The Claimant relied on her witness statement dated 16th July 2018, and bundle of documents running from page 4 to 79, in her evidence –in –chief.
32. She restated that termination was on account of unsatisfactory performance. She explained that she had a complicated pregnancy over the period of review, and did not perform in accordance with expectation. She exhibited medical reports, showing admission at Nairobi Hospital, over her pregnancy complications.
33. She fell sick again after discharge around January 2016. Hospital bills were paid by CIC Insurance, an insurance company contracted by the Respondent, offering staff medical insurance. The Respondent was aware of the Claimant's hospitalization.
34. She delivered on 7th March 2016. She took 90 days of maternity leave, ending in June 2016. She took annual leave at the end of maternity leave, which ended in July 2016.



35. She was alleged to have performed unsatisfactorily in quarter 1 and 2. She was away on pregnancy-related illness initially. Quarter 2 covered March to June 2016, a period when the Claimant was officially on maternity leave. The Respondent was not fair.
36. She was invited to review meetings as pleaded by both Parties. On 6th July 2017, her contract was terminated, on allegations of poor performance. She appealed against the decision. There was no response.
37. Cross-examined, she told the Court that she delivered a baby girl on 7th March 2016. She received her full salary over the period of maternity leave. She attended review meeting on 29th September 2016. She was advised of her right to be accompanied by a colleague or trade union representative. She was accompanied to the meetings by James Maina, a trade union representative who worked for the Respondent at Embakassi Branch.
38. The Review Panel was aware about the Claimant's pregnancy challenges. The Respondent offered no assistance to the Claimant. Termination did not take place, immediately after the review meetings.
39. The Claimant asked for more support. She undertook to open more accounts. She discussed targets with her Employer. There was no coaching. She was quoted in the minutes of the review meetings, as conceding that she was coached. She never received support from her manager.
40. She returned from maternity/ annual leave at the beginning of July 2016. It was 6 months, before review of 28th February 2017.
41. At the review meeting of 6th March 2017, she disclosed what she achieved for the period under review. She conceded that her performance was unsatisfactory at 66%. There were resolutions on her targets.
42. The letter dated 15th May 2017 from the Respondent to the Claimant, issued 11 months after she had returned from maternity leave. She was advised that the Respondent would escalate lack of improvement to another level. She was told that if she had any challenges, she should communicate them to the Respondent. She was invited for the last performance review meeting on 13th June 2017, close to 1 year, after she returned from maternity leave. The meeting was held on 13th June 2017. James Maina, trade union representative attended the meeting, and commented that the Claimant's performance was unsatisfactory.
43. On the Counterclaim, the Claimant admitted on cross-examination that she had outstanding loans granted by the Respondent, at the time she left employment. She did not know what was the current loan balance.
44. Redirected, she told the Court that performance targets were set annually, at the start of the year. She was pregnant or ill, for the better part on the year 2016. She was not appraised fairly.
45. Leah Kerich adopted her witness statement and documents filed by the Respondent, marked as exhibits 1-34, in her evidence-in-chief.
46. Cross-examined, she told the Court that she joined the Respondent in December 2018. She was not there during the process of the Claimant's performance review and termination. Review begins with setting of targets. The targets are agreed between the Employee and their team leaders. They are signed by both. In 2015, the Claimant was unwell. Her performance was unsatisfactory in quarter 1 and 2 of 2016. Her inpatient records are dated 2015. There is a discharge summary dated 6th January 2016. She gave birth in March 2016. She took 90 days of maternity leave. Kerich did not know that the Claimant combined maternity leave with annual leave, returning to work in July 2016. Quarter 1 fell between January and March 2016. Quarter 2 was from April to June 2016. She was not appraised while on



maternity leave. The Respondent gave her time to recover and considered that she was away for some time. She was placed on PIP from quarter 2 in 2016. She was taken through a review hearing, not a disciplinary hearing. Redirected, Leah told the Court that in issue was a performance, not a disciplinary exercise.

Submissions.

47. The Claimant submits that, as held by the Court of Appeal in Civil Appeal No. 117 of 2017 between *National Bank of Kenya v. Anthony Njue John*, and Industrial Court Cause Number 823 of 2010, *Jane Samba Mukala v. Ol Tukai Lodge*, where poor performance is alleged against an Employee, there must be a high level of proof. Employment policy or practice must be in place, for measurement of performance. Measures must be taken to address alleged poor performance. The Employee must be given an opportunity to address their weaknesses. The Claimant submits that she was not taken through a fair performance review procedure. She submits further, that unsatisfactory performance was not a valid reason to justify termination, under sections 43 and 45 of the *Employment Act*.
48. The Claimant restates her prayers as pleaded in the Statement of Claim, in her closing submissions. She does not submit on the Counterclaim.
49. The Respondent holds that termination was fair and lawful, invoking E&LRC Cause Number 2030 of 2016 between *Kenya Union of Commercial Food & Allied Workers v. Vishnu Enterprises* [2021] e-KLR, submitting that it proved valid reason, and demonstrated procedural fairness. The Respondent also adopts the decision in Jane Samba Mukala invoked by the Claimant above, in her submissions, on the standards of a fair performance review hearing.
50. The Respondent had an employment policy or practice for measurement of performance; there were measures on assessment of performance; the Employee was made aware that the Respondent was considering termination for poor performance; the Claimant was placed on PIP with no improvement at the end of the exercise; she was provided support to improve; she was heard in the presence of her trade union representative; her performance was poor even after her maternity leave; and the Claimant and her trade union representative conceded that performance was unsatisfactory, at the last meeting held on 20th June 2017.
51. Lastly, the Respondent submits that there is no Response to the Counterclaim, and the Respondent is entitled to a final judgment on the Counterclaim, as held in the High Court decision, *Mark Macaulay v. Rob De Boer* [2002] e-KLR.
52. The issues, as captured by the Parties in their respective closing submissions, are whether termination was fair and lawful; whether the Claimant merits the remedies sought; whether the Counterclaim is merited; and who should pay the costs and interests arising from this litigation.

The Court Finds: -

53. There is no dispute that the Claimant was employed by the Respondent as a Graduate Clerk in July 2011. She became a Teller, and later a Micro Credit Officer, stationed at the Respondent's Tom Mboya Branch, Nairobi.
54. It is not disputed that on 6th July 2017, after 6 years of service, her contract was terminated by the Respondent, on the ground that she did not take remedial actions to improve on her performance, and subsequently her performance for 2 consecutive quarters in the year 2016, and quarter 1 in the year 2017, were rated unsatisfactory.



55. Counterclaim. The third issue above, does not appear contentious, and the Court would beg, to begin with the issue. There is no response to the Counterclaim. The Claimant conceded in her evidence that she had outstanding loans with the Respondent, at the time she left employment. She specifically agreed that she had a personal loan, a residential property loan and a laptop loan. She told the Court that she did not know what her loan balance was. She did not dispute the figure pleaded by the Respondent. She was silent about the Counterclaim in her closing submissions. The Court is satisfied that the Counterclaim is merited, and enters Judgment for the Respondent against the Claimant for: -
- I. Personal loan at Kshs. 491,666.
 - II. Residential property loan at Kshs. 1,381,306.
 - III. Laptop loan at Kshs. 47,218.
- Total ... Kshs. 1,920,190.
56. The Respondent did not establish the rate of interest payable on these loans, and the Court does not think it is helpful to the Parties, to make an order on payment of interest on prevailing commercial rates, from 5th August 2017, as pleaded by the Respondent. The loans were not commercial loans, to attract commercial rates of interest. Parties were in an employer-employee relationship, not a commercial relationship. There was not a single loan contract document exhibited by the Respondent, to show that any loan was a commercial loan. The Claimant obtained the loans, in her capacity as an Employee of the Respondent. The loans were based on an employer-employee relationship. The employer-employee relationship must be protected from the vagaries of commercialism. The prayer for interest based on prevailing commercial rates, sought by the Respondent is declined.
57. Validity of termination. The Respondent retained a Performance Management Policy, which the Claimant was familiar with. The Key Performance Indicator Tool had a rating scale. A rating of 70% and below, was deemed unsatisfactory. The Claimant's contract was terminated for unsatisfactory performance for 2 consecutive quarters in the year 2016, and quarter 1 in 2017.
58. The Respondent was able to show that it had a performance management policy in place, and that it rolled out that policy, in accordance with the principles enunciated in *Jane Samba Mukala v. Ol Tukai Lodge*, cited by both Parties above.
59. The default appears to be that, in observing and applying those principles, the Respondent completely disregarded the reasons underlying the Claimant's unsatisfactory performance- her pregnancy and pregnancy-related illness.
60. There are medical records exhibited by the Claimant, which do not appear to have been considered adequately by the Respondent, in evaluating the Claimant's performance, and in taking the decision to terminate her contract for unsatisfactory performance.
61. She was pregnant over the period of review. Medical records show that she had been seeing doctors from as early as 30th July 2015, when she was booked for ultrasound test. The Respondent alleges that the Claimant's performance was unsatisfactory from the year 2015.
62. She had been in employment from the year 2011, and until the year 2015, which coincided with her difficult pregnancy, there were no complaints about her performance.
63. She was inpatient at Nairobi Hospital in November 2015. Medical Bills were paid through an Insurance Company contracted by the Respondent.



64. She was again admitted at the same facility in March 2016. She delivered a baby girl, on 7th March 2016, and was discharged on 8th March 2016.
65. The Respondent would be expected to have received copies her sick leave records, for the time she was hospitalized. There is little chance that the Respondent did not know about the Claimant's pregnancy and illness.
66. She was on statutory and contractual maternity leave under the Employment Act and prevailing CBA, for a period of 90 days, ending in June 2016. The Claimant then took an additional month of annual leave, to enable her take adequate care of herself and her newborn. She returned at the beginning of July 2016, to find the Respondent reading accusations against her, for unsatisfactory performance in quarter 1 and 2 of the year 2016.
67. Evaluating the Claimant under quarter 1 and 2 of 2016, while she was on maternity and annual leave, and bearing the heavy burden of motherhood and the strains of associated illness, was not a fair employment decision. How was she expected to apply herself fully at work, while giving birth and taking care of an infant?
68. The medical records exhibited by the Claimant indicate that she gave birth again, on 25th September 2017, which was 2 months after termination of her contract. There is a discharge summary from Nairobi Hospital Newborn Unit, showing that the Claimant gave birth again, on 25th September 2017, and was discharged on 26th September 2017. Termination of employment took place on 1st July 2017, about 2 months before the second birth. This time, she delivered a baby boy.
69. Although this evidence was not orally highlighted to the Court by the Claimant, it would mean that at all times during the performance review meetings, leading to termination, she was pregnant and/or taking care of a newborn. The Court is entitled to review all the documentary evidence placed before it. Her second pregnancy was a material fact, and relevant to the proceedings, and the Claimant should not have been coy about giving this evidence. Termination took place, 2 months before her second birth. It took place on 6th July 2017, while her boy was born on 25th September 2017.
70. While the Claimant and even her trade union representative acknowledged, at the last review meeting held on 20th June 2017, that her performance was unsatisfactory, she ought to have articulated to the Respondent the reality of her serial pregnancies.
71. It is probable that the Claimant was shy about disclosing that she was pregnant again, in under 1 year after the birth of 7th March 2016. She was probably unsure about how the Respondent would respond to her disclosure, the Respondent having already been engrossed in taking the Claimant through unwarranted PIP. The Claimant had spent 4 months away from work on maternity and annual leave, and would be entitled to another 3 months of maternity leave, in the succeeding year, which would dent her productivity at the workplace. These could have been some of the unstated reasons, why the Claimant did not make full disclosure to the Respondent, concerning her rapid pregnancies.
72. The Court does not attach much weight to her admission, and the admission of her trade union representative, to the complaint by the Respondent, that the Claimant's performance was unsatisfactory. The Claimant was being honest, and had a reasonable explanation for poor performance over the period under review.
73. While the Respondent cannot be faulted for finding that the Claimant's performance was below par in the 1st quarter of 2017, the Respondent can be blamed for finding fault with the Claimant's performance for the 1st and 2nd quarters of 2016. During this period the Claimant had made full disclosure about her pregnancy and the medical challenges that went along with it. She was on



maternity and annual leave. Medical care at Nairobi Hospital coincided with the period when the Claimant was evaluated poorly, from late 2015.

74. The result was that the Respondent ended up discriminating against the Claimant, on the ground of her disclosed pregnancy. Employers should be careful not to place pregnant Employees on PIP during maternity leave, when the Employee cannot apply herself fully to the demands of office. How do you evaluate an Employee, over a period she is away on maternity leave, and experiencing the challenges of new motherhood? How is the Employee expected to improve her performance, while experiencing a difficult pregnancy and nursing an infant, or infants as the case may be?
75. A reasonable Employer would have approached evaluation of the Claimant's performance with caution. Pregnancy, even a normal pregnancy is physically and emotionally draining. Simple characteristics of pregnancy, such as morning sickness can affect performance at work. The Claimant had a difficult pregnancy, requiring admission at hospital twice, in quick succession. Pregnancy coincided with the evaluation and PIP exercises. She was not fully up to speed with her Employer's expectations. The Respondent was aware about her medical challenges, at least on the first pregnancy. The Respondent does not appear to have reasonably accommodated the Claimant, and imposed additional burdens on the Claimant, which in the view of the Court, constituted unfavourable treatment, or in plain language, pregnancy discrimination. The Claimant was placed at a disadvantage on account of her pregnancy. Pregnancy discrimination may take the form of denying reasonable accommodation to Employees based on pregnancy, childbirth and related medical conditions. The Respondent engaged in this form of pregnancy discrimination against the Claimant.
76. There are Employers who view pregnancies at their enterprises as a financial burden. The persistent absence by Employees during pregnancy, childbirth and while on maternity leave, is viewed as a drain on productivity at the workplace. It is not unusual to have female job applicants asked by Employers to disclose their pregnancy status; or to have female Employees required to work for substantial period before having a baby; or discouraging female Employees from giving birth in quick succession; some Employers have invaded the family planning space of their female Employees; and generally, it is not unusual for some enterprises to equate reproductive rights of their female Employees, to lack of productivity at the workplace. These regressive employment attitudes and practices, have been found to amount to direct or indirect pregnancy discrimination [see report of the Equality & Human Rights Commission [GB], titled Pregnancy and Maternity Discrimination Research Findings, 25th May 2018].
77. These attitudes and practices may also discourage female Employees from claiming their full reproductive rights. The Claimant probably felt restrained in disclosing that she was pregnant again, because she was already undergoing an undeserved PIP, and was afraid her second pregnancy would strain the employer-employee relationship further.
78. Pregnancy discrimination amounts to another form of discrimination, which is prohibited under the Constitution and the Employment Act – discrimination on account of one's sex. The European Court of Human Rights in *Jurcic v. Croatia*, Application Number 54711/15, underscored that pregnancy discrimination, is sex discrimination. The Claimant suffered a double-headed discrimination, at the hands of the Respondent bank. She was disadvantaged on account of being pregnant, and being of the female gender.
79. Medical evidence availed to the Court, confirms that the performance concerns did not pre-date the Claimant's pregnancy. She had pregnancy challenges between 2015 and 2017, the period her performance was rated poorly. From 2011 to 2015, she had worked seamlessly. She told the Court that



- she did not have any case of indiscipline or unsatisfactory performance, and none was brought to the attention of the Court by the Respondent, from 2011 to late 2015.
80. The Respondent failed to investigate, and get to the root cause of dip in the Claimant's form at the workplace. She was not a new Employee. She had been in employment for 4 years before issues were raised at the fall of 2015. It was likely that something triggered the dip in form. A reasonable person would attribute unsatisfactory performance by the Claimant to her disclosed, and undisclosed pregnancies.
 81. There was no valid reason to warrant termination. The Claimant was away on maternity and annual leave, in quarter 1 and 2 of 2016. She had pregnancy difficulties and was hospitalized preceding quarter 1, in late 2015. These medical challenges were within the knowledge of the Respondent, and were not reasonably taken into account, in assessing the Claimant's performance. The period relating to evaluation over quarter 1 of the year 2017, cannot be blamed on the Respondent, for although medical records show that the Claimant was pregnant again, this was not disclosed by the Claimant. She did not inform the last review meeting that she was pregnant again
 82. Procedure. The procedure concerning performance review hearings met the minimum statutory standards of procedural fairness, under the *Employment Act*. The Claimant was invited to review meetings at every turn, and the subject matter was communicated in clear details. She had the company of her trade union representative James Maina. She was granted the opportunity to make her representations, as was her representative James Maina. The minutes of the meetings were signed by the Claimant, and their correctness is not contested. The Respondent satisfied the required standards of fair procedure, under Sections 41 and 45 of the *Employment Act*.
 83. The Claimant made an appeal against termination vide her letter received by the Respondent on 5th September 2017, exhibited at page 72 of the Claimant's documents. Although she states that there was no response, there is a written response dated 18th September 2017, signed by Evelyne Munyoki, Respondent's Human Resource Director. The response explains that the appeal was declined. The response was posted to the Claimant through the same postal address she used in her letter of appeal. There is no procedural flaw shown on appeal.
 84. Remedies. There was no valid reason to justify termination. While the Claimant conceded that her performance was unsatisfactory, the Respondent overlooked the reason for unsatisfactory performance. The Claimant was pregnant, with significant related medical challenges. She was hospitalized, and was on maternity and annual leave over part of the period she was being accused of poor performance. The Claimant did not articulate to the Respondent in detail, the extent of her pregnancy situation, and the Respondent cannot be blamed in finding that she had failed in the evaluation of quarter 1 of 2017.
 85. The Claimant's contract was not terminated based on valid reason. There was pregnancy discrimination of the Claimant by the Respondent, in relation to evaluation over a period she was on maternity and annual leave, and experiencing pregnancy related illness. The Respondent did not handle performance management of its pregnant Employee with caution and sensitivity.
 86. The dispute was reported to the Ministry of Labour, and went through conciliation. The Conciliator recommended payment to the Claimant of terminal benefits under the CBA, and equivalent of 8 months' salary in compensation for unfair termination.
 87. The Claimant prays for reinstatement without loss of benefits; notice; leave; equivalent of 12 months' salary in compensation for unfair termination; unpaid salaries from the date of termination to the date of Judgment; damages for unfair treatment; costs; and interest.



88. The remedy of reinstatement is not practicable, reasonable or lawful, termination having occurred over 6 years ago, on 6th July 2017. Section 12 [3] [vii] of the *Employment and Labour Relations Court Act*, limits grant of the remedy of reinstatement to within 3 years of termination.
89. Notice is granted at Kshs. 113,401, equivalent of 1 month pay.
90. Details of outstanding leave have not been placed before the Court, and the prayer for annual leave pay is declined.
91. The Claimant worked for a total 6 years. She could not be blamed for contributing to the circumstances leading to termination. She had successfully completed probation and was confirmed to permanent terms of service. She expected to work until retired. The recommendation by the Conciliator, for payment of compensation equivalent of 8 months' gross salary at Kshs. 907,208 was reasonable, and is endorsed and granted by the Court, to the Claimant.
92. The Court has concluded that evaluation of the Claimant's performance while on maternity and annual leave, and while she was experiencing significant pregnancy-related illness amounted to pregnancy discrimination, which is forbidden under the the *Employment Act* and *Constitution* of Kenya. The Claimant pleads unfair treatment and seeks general damages. The Court understands the prayer for unfair treatment to equate to a prayer for damages under pregnancy discrimination, and grants the Claimant general damages for pregnancy discrimination at Kshs. 899, 581.
93. The prayer for salaries and allowances from the date of termination, to the date of Judgment is replicated. It is a component of the prayer for reinstatement without loss of benefits, which has been declined. It cannot be granted separately from reinstatement. Without reinstatement, there is no back salaries.
94. The prayers for costs and interest on the Claim is declined.
95. Judgment is entered in favour of the Claimant as follows: -
 - a. It is declared that termination of the Claimant's contract was not based on valid reason and was unfair.
 - b. It is declared that the Respondent discriminated against the Claimant based on her pregnancy.
 - c. The Respondent shall pay to the Claimant, notice at Kshs. 113,401, equivalent of 8 months' gross salary in compensation for unfair termination at Kshs. 907,208, and damages for pregnancy discrimination at Kshs. 899,581 – total Kshs. 1,920,190.
 - d. No order on the costs and interest.

In Sum, It Is Ordered: -

- a. The Counterclaim is allowed at Kshs. 1,920,190, with no order on the costs and interest.
- b. It is declared that the Claimant's contract was terminated unfairly, and was based on pregnancy discrimination.
- c. The Respondent shall pay to the Claimant notice at Kshs. 113,401, equivalent of 8 months' gross salary in compensation for unfair termination at Kshs. 907,208, and damages for pregnancy discrimination at Kshs. 899,581 – total Kshs. 1,920,190, with no order on the costs and interest.



- d. The amount due to the Claimant, shall be set off, against the amount due to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 13TH DAY OF OCTOBER 2023.

JAMES RIKA

JUDGE

