



**Mwangi v CPF Financial Services Limited (Cause 833 of 2018)
[2023] KEELRC 3018 (KLR) (24 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3018 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 833 OF 2018
SC RUTTO, J
NOVEMBER 24, 2023**

BETWEEN

LUCY WANJIKU MWANGI CLAIMANT

AND

CPF FINANCIAL SERVICES LIMITED RESPONDENT

JUDGMENT

1. The Claimant avers that she was employed by the Respondent vide a letter of offer dated 8th February 2016, in the position of Assistant Stakeholder Advocacy and Relations Officer on a six years renewable contract with a starting salary of Kshs 88,266.32. According to the Claimant, she endeavoured to discharge her responsibilities with due diligence and in accordance with the laid down rules and regulations as outlined in her job description.
2. It is apparent that the employment relationship was short-lived as the Claimant's employment was terminated on 11th December 2017. The Claimant has termed her termination from employment unfair and unjustifiable and consequently, seeks against the Respondent the sum of Kshs 8,751,591/= being one month's salary in lieu of notice, compensation for wrongful termination and salary underpayments.
3. Opposing the Claim through its Statement of Response dated 11th July 2018, the Respondent avers that the Claimant ruined the employment relationship by unreasonably insisting on earning Kshs 114,762.20. The Respondent further states that the Claimant was terminated for dishonesty and misconduct. In the Respondent's view, the reliefs sought by the Claimant are untenable in law and in fact. On this account, the Respondent has asked the Court to dismiss the Claim with costs.
4. The matter proceeded for hearing on 26th June 2023 and 27th July 2023, during which both parties called oral evidence.



Claimant's case

5. The Claimant testified in support of her case and for starters, she adopted her witness statement to constitute her evidence in chief. She further produced the documents filed on her behalf as exhibits before Court.
6. The Claimant stated that her working relationship with the Respondent's General Managing Director was not a smooth one. She averred that the General Managing Director kept summoning her to his office frequently to ask about Kenya National Union of Nurses related matters to which her husband was a party.
7. The Claimant stated that on or about 10th August 2016, her probation period ended and she signed a new contract of employment in which it was indicated that her new salary would be Kshs 114,746.20.
8. On or about August 2016, she went on maternity leave and her new salary scale of Ksh.114,746.20, was not implemented as she was only paid a sum of Ksh.88,266.32/=.
9. According to the Claimant, the Respondent discriminated against her because she had taken maternity leave hence its hesitation on implementing her new salary scale.
10. She raised the issue with the Managing Director of the Respondent who informed her that the issue would be addressed and the new salary scale would be implemented. The matter was never addressed and the new salary scale was never implemented up to the time the Respondent unlawfully, wrongly and without justifiable cause summarily terminated her employment.
11. Her advocates who were on record at that time, Messrs. Nchoe, Jaoko and Company Advocates wrote a letter to the Respondent demanding payment of the arrears as per the contract signed on 8th August 2016. The Respondent failed and/or neglected to respond to the said letter.
12. The Claimant further stated that the Respondent's General Managing Director told her to withdraw the demand letter written by Messrs. Nchoe, Jaoko and Company Advocates. She was further warned that if she took the Respondent to court, her employment would be terminated.
13. It was the Claimant's view that the threats and actions of the Respondent were oppressive, inhuman, unfair, illegal and against fair labour practices.
14. She averred that on or about 4th December 2017, the Respondent wrote her a show cause letter seeking an explanation why disciplinary action should not be taken against her.
15. The show cause letter intimated that she had received a contract on 9th October 2017 and on returning the executed contract, she had backdated the signature to read 10th August 2016. The Respondent also indicated in the show cause letter that her actions amounted to dishonesty.
16. She was given 72 hours to respond to the show cause letter. According to her, the notice was short for such grave accusations. She responded to the Notice to Show Cause through a letter dated 7th December 2017.
17. On or about 8th December 2017, she was called by the Respondent's Human Resource Manager and instructed to go and meet another Human resource Personnel of the Respondent on the Mezzanine floor of the Respondent's premises.
18. On 8th December 2018, she met with a group of seven (7) people who were all employees of the Respondent. The Human Resource Manager told her to receive a letter dated 7th December 2017 and append her signature to indicate that she had received the letter.



19. The said letter was summons for a disciplinary hearing that was to take place on 8th December 2017 on the 7th floor of the boardroom of the Respondent's offices. She was given the said letter at 11.00 am on the same day that the disciplinary hearing was slated to take place.
20. She further avers that the disciplinary hearing notice had no provision for her to bring a witness.
21. She proceeded to the Respondent's boardroom on the 7th floor and waited for an hour but nobody showed up for the meeting and therefore there was no disciplinary hearing.
22. On or about 11th December 2017, the Respondent's Human Resource Manager called and instructed her to meet the General Managing Director on the 7th floor of the Respondent's office premises.
23. She was later given a letter of termination and was shocked that it stated that she had attended a disciplinary hearing on 8th December 2017.
24. The termination letter dated 11th December 2017 also stated that she had deliberately ignored and or refused to adhere to the terms of the confirmation letter and the one correcting the errors on the appointment contract. This was a new allegation that was not in the Notice to Show Cause dated 4th December 2017.
25. According to the Claimant, her termination from employment was unfair and unjustifiable and as a result, she suffered great financial loss and psychological stress.

Respondent's case

26. The Respondent called oral evidence through Ms. Gladys Egwa Mwambingu and Geoffrey Ikiugu who testified as RW1 and RW2 respectively. Ms. Mwambingu who identified herself as the Respondent's Human Resources-Operations, adopted her witness statement and documents filed on behalf of the Respondent to constitute her evidence in chief.
27. It was RW1's evidence that on or around 2nd October 2017, she received instructions to prepare confirmation contracts for various employees. One of the contracts she was tasked with drawing, was the Claimant's.
28. She drew and delivered the bundle of confirmation contracts to the Human Resources Manager-Operations, who forwarded them to the Respondent's Group Director for execution on or around 6th October 2017.
29. She is aware that the Claimant collected her confirmation contract for execution on or around 9th October 2017 and returned the executed contract to the Human Resources department on or around 16th October 2017. That even though the Claimant collected the contract on 9th October 2017, she backdated it to read that it had been executed on 10th August 2016.
30. On or around 18th October 2017, the Claimant verbally inquired from her whether the terms of employment automatically changed on confirmation of employment. She informed the Claimant that terms of employment would normally remain unchanged.
31. The Claimant then informed her that the salary contained in the confirmation contract she had executed was different from the salary contained in her appointment letter. On perusal of the Claimant's confirmation contract, she (RW1) noticed that Clause 5.0 of the contract provided for an erroneous salary of Kshs.114,746.20, instead of the correct salary of Kshs.88,266.32.



32. She informed the Claimant that the salary of Kshs.114,746.20 had been inserted in the contract due to a typing error on her part, and requested her to surrender her copy of the contract to facilitate the issuance of a new contract. However, the Claimant refused to oblige to her request.
33. On or around 18th October 2017, she reported the error to the Human Resources Manager- Operations and consequently, on or around 19th October 2017, the Respondent formally wrote to the Claimant informing her that the figure of Kshs.114,746.20 had been erroneously inserted into the employment contract. The Respondent also forwarded to the Claimant the contract containing the correct salary for her execution.
34. Mr. Geoffrey Ikiugu who testified as RW2, described himself as the Respondent's Human Resources Manager. Similarly, he adopted his witness statement to constitute his evidence in chief. He proceeded to produce the documents filed on behalf of the Respondent as exhibits before Court.
35. It was RW2's evidence that on or around 19th January 2016, the Claimant made a formal application for employment with the Respondent. She had previously served in low-cadre positions (as a receptionist and temporary salesperson), save for a mid-level position she had held at the Kenya National Union of Nurses.
36. He (RW2) earnestly believes the Claimant only secured the position at the Kenya National Union through the influence of her lover/husband, who was the Union's General Secretary.
37. RW2 further stated in evidence that the Claimant had asked for a consolidated monthly salary of Kshs.80,000.00 upon taking up employment with the Respondent.
38. On or around 21st January 2016, the Respondent made a formal offer of employment to the Claimant. A salient term of the offer was that the Claimant would join the Respondent at Salary Band 7 (IA) for a consolidated monthly salary of Kshs.88,266.32. The Claimant accepted the offer of employment by executing the offer letter and returning it to the Respondent.
39. On or around 8th February 2016, the Respondent appointed the Claimant, on a provisional basis, to the position of Assistant Stakeholder Advocacy & Relations.
40. On or around 11th February 2016, the Respondent, as part of its background checks on the Claimant, sent reference check letters to the referees she had listed in her curriculum vitae, namely Messrs. Seth Panyako and William Langat.
41. On or around 24th February 2016, Mr. Seth Panyako responded to the Respondent's letter indicating that the Claimant was an honest, dependable and diligent employee. However, as the Respondent would later discover, the Claimant had fraudulently submitted Mr. Seth Panyako, her lover/husband, as a confidential referee without disclosing the intimate relationship that existed between them.
42. During the course of his work with the Respondent, he came to notice that the Claimant was often absent from work, thereby affecting her performance and constraining the other employees in her department to handle a larger workload.
43. With regards to the Claimant's assertions of discrimination against her on grounds of pregnancy, RW2 stated that she (Claimant) was hired while she was pregnant, was confirmed to employment notwithstanding her pregnancy status and allowed to proceed on paid maternity leave.
44. To the best of his knowledge, the Respondent operates a fair and non-discriminatory workplace that observes employment guidelines and the relevant human resource procedures.



45. It was RW2's further testimony that on or around 6th October 2017, upon resumption of work from maternity leave, the Respondent confirmed the Claimant's employment as Assistant Stakeholder Advocacy & Relations.
46. The Respondent's Human Resources Officer-Operations drew the confirmation contract which the Claimant collected on or around 9th October 2017. However, it was later discovered that RW1 had erroneously inserted the salary of Kshs.114,762.2/= into the Claimant's confirmation contract. The correct salary for employees of the Claimant's rank and cadre (i.e. Assistants) is Kshs.88,266.32 according to the Respondent's pay grade and structure.
47. That on or around 16th October 2017, the Claimant returned an executed copy of the confirmation contract containing the erroneous salary and RW1 noticed that she had backdated the confirmation letter.
48. The Respondent requested the Claimant to surrender the confirmation letter and collect the one with the correct salary and date, but she refused to do so.
49. On or around 19th October 2017, the Respondent formally wrote to the Claimant informing her that the figure of Kshs.114,746.20 had been erroneously inserted into the employment contract. The Respondent forwarded to her the contract containing the correct salary for her execution and instead of executing the corrected contract, the Claimant demanded for a salary of Kshs.114,746.20.
50. In RW2's view, the Claimant's insistence on a salary of Kshs.114,746.20 was unreasonable because the Letter of Appointment explicitly informed her that the salary for her position within the Respondent's organizational structure would be Kshs.88,266.32 and further, her professional qualifications and previous work experience did not justify the demanded salary of Kshs.114,746 20. Further, the Claimant had asked for a consolidated monthly salary of Kshs.80,000.00 upon taking up employment with the Respondent.
51. RW2 further stated that the Respondent investigated the Claimant's conduct regarding back-dating the confirmation contract and insistence on an erroneous salary and determined that her actions amounted to dishonesty, punishable by summary dismissal, under its Human Resources Manual and Code of Conduct Policy.
52. On or around 4th December 2017, the Respondent issued a Notice to Show Cause inviting the Claimant to explain why disciplinary action should not be taken against her for dishonesty and lack of integrity.
53. She responded to the Respondent's Notice to Show Cause on or around 7th December 2017, by making bare denials. In her reply, the Claimant evaded and/or refused to specifically respond to the charges of dishonesty, misconduct and unreasonableness contained in the Notice to Show Cause.
54. That on or around 7th December 2017, the Respondent wrote to the Claimant informing her that it was not satisfied with her response to the Notice to Show Cause and consequently invited her to a disciplinary hearing to be held on 8th December 2017 at its Boardroom. The Respondent's Disciplinary Committee held a disciplinary hearing on or around 8th December 2017, to deliberate on the Claimant's dishonesty.
55. Upon conclusion of the disciplinary hearing and considering the Claimant's representations, the disciplinary committee recommended that she be summarily dismissed from employment.



56. On or around 11th December 2017, the Respondent terminated the Claimant's employment by way of summary dismissal and thereafter paid all her accrued terminal benefits and issued her with a certificate of service.

Submissions

57. It was submitted on behalf of the Claimant that her termination from employment was unfair as the same was based on invalid reasons and the procedure of termination was itself not fair. In support of this position, the Claimant invited the Court to consider the determination in the case of Kenfreight (EA) Ltd vs Benson K. Nguti (2016) eKLR.
58. The Claimant further posited that the allegation of dishonesty by backdating the date of the employment contract to 10th August 2016 was never proved by the Respondent. On this score, she maintained that Mr. Hosea Kili, the Respondent's Chief Executive Officer, who signed the contract, was never called as a witness in these proceedings. She further maintained that no expert witness was called by the Respondent to prove the allegation that she was the one who inserted the date and not the Respondent's Chief Executive Officer, Mr. Hosea Kili.
59. In further submission, the Claimant stated that the frivolous allegation with regards to the erroneous salary was never proved by the Respondent. Again, she maintained that the Respondent's Chief Executive Officer was never called as a witness to deny having not dated the employment contract before the same was delivered to her for signing. According to the Claimant, the witnesses who were called were not privy to the execution of the employment contract. She further argued that there is no evidence that the letter dated 19th October 2017, was delivered to her.
60. The Claimant further submitted that she was not informed of her right to be accompanied by a colleague and that further, the invitation letter did not inform her that the outcome of the disciplinary process would lead to her dismissal from employment. She further maintained that she had less than 20 hours to attend the disciplinary hearing and was not given the option to choose another date.
61. Further poking holes on the disciplinary process, the Claimant submitted that she was not given the right to make any oral or written representations in response to the Respondent's allegations. She further argued that the disciplinary committee was made up of only senior managers who intimidated her.
62. The Claimant urged the Court to make a finding that the Respondent has not discharged its evidential burden of proof to show that her termination on grounds of dishonesty, document falsification and failure to sign the contract, were valid and fair as required by the law.
63. The Respondent on the other hand submitted that under the general principles of the law of contract, remuneration constitutes one of the fundamental terms in a contract of service. On this issue, the Respondent placed reliance on the case of Galgalo Jarso Jillo vs Agricultural Finance Corporation (2021) eKLR and argued that where there is no meeting of minds of the contracting parties, the contract is incapable of performance and is void ab initio.
64. The Respondent maintained that the termination of the Claimant's employment was justified, lawful and fair as she did not have a valid employment contract and cannot claim unfair termination.
65. It was further submitted by the Respondent that the actions and/or omissions by the Claimant amounted to gross misconduct under Clause 1.14.9 of its Human Resource Policies and Procedures Manual and Section 44(4)(g) of the *Employment Act*, 2007, warranting summary dismissal. In support



of this argument, the Respondent cited the case Patrick Njuguna Kariuki vs Del Monte (K) Limited (2012) eKLR.

66. The Respondent further maintained that despite the Claimant's actions amounting to gross misconduct warranting summary dismissal, it complied with the procedural requirements of the law in processing her termination.
67. The Respondent concluded its submissions by stating that it complied with all substantive and procedural aspects of termination of employment as required by law.

Analysis and determination

68. Flowing from the pleadings by both parties, the evidentiary material placed before me and the rival submissions, this Court is being called upon to resolve the following issues:

- i. Whether the termination of the Claimant's employment was substantively justified;
- ii. Whether the Claimant's termination was in line with the requirements of a fair process; and
- iii. Whether the Claimant is entitled to the reliefs sought.

Whether the termination of the Claimant's employment was substantively justified

69. Pursuant to Sections 43 and 45 of the *Employment Act* (Act), an employer is required to prove that there was substantive justification to warrant the termination of an employee's contract of service. Under Section 43, an employer is required to prove the reasons for termination while Section 45(2) (a) and (b) provides that a termination of employment is unfair if the employer fails to prove that the reason for the termination is valid, fair and related to the employee's conduct, capacity or compatibility; or its operational requirements.

70. It is discernible from the Claimant's letter of termination that the reasons advanced for the separation were as follows:

- i. She breached the existing staff rules and regulations (including the code of conduct) that govern all employees and backdated the date of signing of the contract to read 10th August 2016 yet the said contract was issued/served to her on 9th October 2017.
- ii. She deliberately ignored and or refused to adhere to the terms of the confirmation letter and the one correcting the errors on the appointment contract and instead opted to demand for the sum of Ksh529,597.60 from the employer despite being informed that the contract which she relied on was erroneous
- iii. She deliberately refused to sign the corrected contract with the right amount for her Job Grade as per the existing salary structure applicable to all staff and thereby refused to be bound by the company's terms and conditions of employment.
- iv. She was very arrogant and rude during the hearing session, on 8/12/2017, thereby refusing to answer some of the questions therein by indicating that her issues were before the Court ostensibly via Employment Cause no. 2410 of 2017 between herself and the institution despite the fact that the sought explanation did not in any way touch on the subject suit.
- v. The committee found that her actions amounted to dishonesty and lack of integrity contrary to the institution's core values, policy and procedures, employment code of conduct and the relevant applicable law and thus, amounting to gross misconduct on her part.



71. Revisiting the record, it is common cause that the Claimant was appointed by the Respondent to the position of Assistant Stakeholder Advocacy and Relations on a six-year renewable contract. Through the letter of appointment, the Claimant was advised that she would join the Respondent organization at salary band (7) (1A) in the establishment and was to be paid a consolidated monthly salary of Kshs 88,266.32.
72. All seemed well in the employment relationship until the Claimant was issued with a contract of employment following the successful completion of her probation period. Notably, clause 5.0 of the said contract of employment provides that the Claimant's monthly salary was to be Kshs 114,746.20. According to the Respondent, this was an error as the Claimant was to retain her salary of Kshs 88,266.32 despite confirmation of her appointment.
73. In support of its case, the Respondent exhibited a letter dated 19th October 2017, signed by the Group Managing Director in which the Claimant was advised that clause 5.0 of the contract of employment was erroneous and that the salary attached to the role at an Assistant level was Kshs 88,266.32. To this end, a fresh contract was dispatched to the Claimant but she did not sign the same. Indeed, she confirmed during cross-examination that she did not sign the fresh contract.
74. In further support of its case, the Respondent exhibited its Salary and Grading Structure which indicates the salary payable to the category of employees designated as Assistant, was to be Kshs 88,266.32. Notably, this was the position the Claimant was initially appointed to serve in.
75. In light of the foregoing, I am persuaded that it is more than probable that the Claimant's contract indicating her salary as Kshs 114,746.00, was issued in error. Indeed, it is less likely that the Claimant would be appointed on a salary that was outside her band in the Respondent's Salary and Grading Structure. In any event, at the point the Claimant was being appointed initially, she was notified of her grade and salary band. Indeed, there is no evidence that the Claimant's grade was altered following her confirmation.
76. The way I see it, the Claimant took advantage of a mistake committed by the Respondent in drawing up the contract of employment with regards to the salary payable to her and insisted on being paid a salary that was outside her grade and salary band. This was despite being notified that the salary indicated in the contract of employment was erroneous.
77. Therefore, the Claimant erred in refusing to sign the contract containing the correct salary payable to her as per her grade in the Respondent's Salary and Grading Structure.
78. The Claimant was further accused of backdating her contract of employment to 10th August 2016 despite receiving the same on 9th October 2017. The record bears that the Claimant received the contract of employment on 9th October 2017 and on signing, she dated it 10th August 2016.
79. As it is not logical that the Claimant would have signed the contract of employment before receiving the same, it is therefore apparent that she backdated the said contract at the point of signing.
80. On account of the foregoing reasons, the Claimant by her own actions and omissions, gave the Respondent a reason to take disciplinary action against her. Therefore, her termination was substantively justified.

Fair process?

81. Beyond proving substantive justification, an employer is required to prove that it applied a fair process in effecting an employee's termination. This is the essence of Section 45 (2) (c) of the Act. Further, Section 41 (1) of the Act makes specific requirements in regards to the process to be complied with



by an employer. This entails notifying the employee of the allegations levelled against him or her and thereafter granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.

82. In this case, the Claimant was issued with a Notice to Show Cause dated 4th December 2017, through which it was alleged that she had backdated the contract of employment to read 10th August 2016 despite receiving the same on 9th October 2017.
83. Through the said letter she was asked to tender her reply to the allegations within 72 hours.
84. The Claimant tendered her response to the allegations and protested that the notice was extremely short and unfair.
85. Subsequently, she was invited for a disciplinary hearing through a letter dated 7th December 2017. The hearing was scheduled for 8th December 2017 at 9:00 am.
86. Fundamentally, the Claimant had less than a day to prepare for the hearing. Needless to say, the notice period given to the Claimant to prepare for the disciplinary hearing was quite short and not reasonable.
87. On this issue, I will apply the determination of the Court of Appeal in the case of Nebert Mandala Ombajo vs Institute of Certified Public Accountants of Kenya (ICPAK), Nakuru Civil Appeal No. 62 of 2018, where it was held that:-

“The respondent has not justified the urgency in undertaking the disciplinary proceedings on the 4th March, 2014 when the letters were only written on 3rd March, 2014. [27] Disciplinary proceedings are a grave matter for an employee as the consequences may be catastrophic to the employee’s life. In the case of the appellant, the complaints against him were serious, and there is no doubt that he needed sufficient time to prepare psychologically, and if need be, get the best advice that he could. Any prejudice to the respondent by having the appellant in his place of work could easily have been addressed by sending the appellant on compulsory leave, or interdicting him during the pendency of the disciplinary hearing, so that both the appellant and the respondent would have had time to reflect on and prepare to address the issues arising in the disciplinary process. [28] The fact that the appellant nonetheless, did his best to respond to the allegations made against him and attended the disciplinary proceedings on the due date, did not ameliorate the prejudice that was caused to him by the inadequate notice. It was oppressive, unfair, and unjust, for the respondent to serve the appellant with a letter for a disciplinary hearing that was to take place the next morning. Such haste reduced the disciplinary hearing to a mere formality to achieve that which the respondent had already predetermined. There was no procedural justice and this vitiated the whole disciplinary process.” Emphasis mine

88. I wholly apply and reiterate the above determination to the instant case. The Respondent would not have been prejudiced in any way by giving the Claimant sufficient and reasonable time to allow her prepare her defence and appear for the hearing.
89. It is also notable that in the Notice to Show Cause, the Claimant was only accused of backdating the employment contract to 10th August 2016. Indeed, this was the only charge levelled against her. However, upon appearing for the disciplinary hearing, she was confronted with fresh charges with regards to her refusal to sign a new contract containing her correct salary. This issue was not captured in her Notice to Show Cause hence it is evident that she was not aware that going in for the disciplinary hearing, she would be required to respond to other allegations beyond backdating the contract of employment.



90. This being the case, it was only fair that the Claimant be issued with a fresh Notice to Show Cause and allowed more time to prepare her defence in respect of the fresh charges.
91. As a matter of fact, it was an ambush on the part of the Respondent to introduce new charges during the disciplinary hearing without giving the Claimant any notice to that effect.
92. Going in for the disciplinary hearing and having noted the charges in the Notice to Show Cause issued to her on 4th December 2017, it is more than probable that the Claimant was only prepared to answer to the charges relating to backdating of the contract of employment. In this regard, she had no time to process the fresh charges and respond appropriately.
93. Ideally, the reasons for the termination of employment ought to flow from the Notice to Show Cause. Clearly, this was not the case herein owing to the fresh charges which were introduced midstream by the Respondent during the disciplinary hearing.
94. Ultimately, the Respondent applied a flawed process in effecting the Claimant's termination from employment contrary to the spirit of Section 41 of the Act. In the end, the Claimant's termination was procedurally unfair hence unlawful.

Reliefs?

95. As the Court has found that the Respondent was justified in taking disciplinary action against the Claimant but applied a flawed process, she is awarded one (1) month's salary in lieu of notice and compensation equivalent to three (3) months of her gross salary. This award has also taken into account the period served by the Claimant which was considerably short.
96. The claim for salary underpayment is declined as I have found elsewhere in this Judgment that as per the Respondent's Salary and Grading Structure, the Claimant's salary was Kshs 88,266.32 as opposed to Kshs 114,746.20.
97. The claim for accrued leave is equally declined as it is clear that the same constituted part of the Claimant's terminal dues.

Orders

98. In total sum, Judgment is entered in favour of the Claimant against the Respondent in the following manner:
 - a. The Claimant is awarded the sum of Kshs 88,266.32 being one (1) month's salary in lieu of notice.
 - b. The Claimant is awarded compensatory damages in the sum of Kshs 264,798.96 being equivalent to three (3) months of her gross salary.
 - c. The total award is Kshs 353,065.28.
 - d. Interest on the amount in (c) at court rates from the date of Judgment until payment in full.
 - e. The Claimant shall also have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF NOVEMBER, 2023.

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STELLA RUTTO



JUDGE

Appearance:

For the Claimant Mr. Ondimu instructed by Mr. Morara

For the Respondent Ms. Jeruto

Court Assistant Abdimalik Hussein

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

