



**Kimanga v Gusii Mwalimu Sacco Society Ltd (Cause E040 of 2022)  
[2023] KEELRC 3212 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3212 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E040 OF 2022  
CN BAARI, J  
DECEMBER 7, 2023**

**BETWEEN**

**BENARD NYAKUNDI KIMANGA ..... CLAIMANT**

**AND**

**GUSII MWALIMU SACCO SOCIETY LTD ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant's claim was commenced vide a Statement of Claim dated 7<sup>th</sup> September, 2022, and filed on 20<sup>th</sup> September, 2022. The Claimant prays for a declaration that his termination by the Respondent was unfair, unlawful and irregular, an order for payment of his full terminal benefits, an order for reinstatement to the position he held before termination, an award of exemplary, compensatory and punitive damages and costs of the suit and interest at Court rate.
2. The Respondent entered appearance on 14<sup>th</sup> October, 2022, and thereafter filed a response to the claim and a Counterclaim dated 25<sup>th</sup> October, 2022. The Respondent later filed an Amended Memorandum of Response to the Claim and Counterclaim on 3<sup>rd</sup> November, 2022.
3. The Claimant filed a reply to the memorandum of response and a defence to the Counterclaim on 16<sup>th</sup> January, 2023, which paved way for the hearing of the case.
4. The Claimant's case was heard on 17<sup>th</sup> April, 2023, when the Claimant testified in support of his case. He adopted his witness statement and produced documents filed as exhibits in the matter
5. The Respondent called a total of five (5) witnesses, with the first two testifying on 17<sup>th</sup> April, 2023, another two were heard on 26<sup>th</sup> June, 2023, and the last one on 11<sup>th</sup> July, 2023. The Respondent closed its case on 11<sup>th</sup> July, 2023, paving way for filing of submissions.
6. Submissions were filed for both parties.



### **The Claimant's Case**

7. The Claimant states that he was employed by the Respondent as a Computer Operator and that he rose up the ranks to the position of Assistant System Administrator, earning a gross monthly salary of Kshs 160,952.98 as at the month of July, 2020, when he was wrongfully and unlawfully dismissed from employment.
8. It is the Claimant's case that he was served with a letter of interdiction on 17<sup>th</sup> October, 2019, on the basis that he was involved in the production of a local Sacco ATM card for member number 17551, without authority.
9. The Claimant further states that the interdiction letter informed him that he was required to write a response to the allegations within two weeks. He states that he responded to the letter, wherein, he denied the allegations in toto, but later changed his response to read as directed by the Board of the Respondent.
10. It is the Claimant's case that he accepted to write a statement/response as directed by the Respondent's Directors who demanded that he writes the response in their presence, and accept the allegations on the promise that the disciplinary action will be dismissed, and his statement used to claim compensation from their insurance company, and he be retained in the employ of the Respondent.
11. The Claimant states that the Respondent instead, proceeded to use his statement to dismiss him from service on 24<sup>th</sup> July, 2020. It is his further case that the letter dismissing him from service, indicated the reasons for the termination to be that on 14<sup>th</sup> July, 2019, he without authority produced or caused to be generated local ATMs Cards, utilized the cards to withdraw funds from members accounts and that he admitted liability and agreed to repay the stolen amount of Kshs. 3,118,000/- on account of forgery.
12. It is the Claimant's case that the theft of the money was merely fabricated and a tactic by the Respondent to enrich itself and to get rid of the Claimant unlawfully and unprocedurally.
13. The Claimant states that he suffered loss and damage from the actions of the Respondent and for which he claims compensation as per his statement of claim.
14. It is the Claimant's case that the Respondent's claims in relation to the counterclaim are false and pray that the counterclaim be dismissed with costs.
15. On cross-examination, the Claimant told Court that he committed to pay Kshs. 958,700/-, and that the figure was dictated to him by the Respondent's Board. It is his testimony that he signed a letter dated 29<sup>th</sup> June, 2020, which was a commitment to pay the amount stated herein, and which commitment he made under coercion and intimidation from the Respondent's Board.
16. The Claimant further told this Court that he did not have the letter he wrote because all of them were confiscated by the Board. He further states that his admission of liability was not voluntary.

### **The Respondent's Case**

17. The Respondent states that it acted within the law when dismissing the Claimant, the Claimant having been involved in the production of a local ATM Card for account number 17551 without authority.
18. The Respondent states that it served the Claimant with a letter dated 24<sup>th</sup> July, 2020, which contained the following allegations;



- (a) That on 14<sup>th</sup> June, 2019, the Claimant without authority or permission of account holder number 17551, and several other accounts, produced or caused to be generated Local ATM cards.
  - (b) That the Claimant utilized the ATM cards to withdraw funds from the members' accounts.
  - (c) That the Claimant vide a vide a letter dated 29<sup>th</sup> June of 2020, addressed to the Chairman of the Respondent, admitted liability and further admitted that he had participated in the commission of forgery and fraud against the Respondent. In the said letter, the Claimant admitted that indeed, it was his username that was used to generate illegal ATM transactions.
  - (d) That the Claimant's conduct was in breach of Section 44(4) (g) of the *Employment Act, 2007*, and the Terms and Conditions of Employment of the Respondent.
19. The Respondent therefore prays for an Order Compelling the Claimant to pay the amount of the Counter-Claim of Kshs 908,700/= being the monies he undertook/committed to pay back.
  20. The Respondent/Claimant to pay Kshs.1,183,000/- being monies irregularly and/or wrongfully obtained from the Respondent Sacco together with costs of the counterclaim.
  21. The Respondent's witness (RW1) told Court on cross-exam, that it took her three months to notice that Kshs. 8000/- was withdrawn from her account. She further stated that she did not know what the amount of the counterclaim was and that her claim is only for her Kshs.8000/- and that she had not instructed the Respondent to claim KShs. 3,000,000/-
  22. RW1 further testimony is that she neither had an ATM nor did she apply for one.
  23. RW2, the Respondent's Chief Executive Officer, and who served at the time the Claimant was terminated, told the Court that the Claimant signed a fidelity form which rendered him liable for summary dismissal.
  24. It is RW2's evidence that the letter produced by the Claimant deploying him to the ICT department, was edited and is thus not similar to the one he issued.
  25. It is RW2's evidence that the investigation conducted showed that the Claimant approved the linkage of the ATM Card subject of this suit, and which card was used to withdraw money from the complainant (RW1's) account.
  26. It is RW2's testimony that upon interdiction, the Claimant in his response to the show cause letter issued to him, asked for pardon on the basis that his user name was used to link the fraudulent card.
  27. It is RW2's evidence that during the Claimant's appearance before the Respondent's Board, he committed to pay the sum of Kshs. 958,700/- within a period of six (6) months, but which amount he has to date not settled.
  28. On cross-exam, RW2 told Court that only the ICT department can produce ATM cards. It is his further testimony that one Fridah Nyamisa was an ICT officer, but who was not investigated in relation to the fraud. He further stated that her role was to generate PINs for ATM cards.
  29. RW2 further stated that he did not file all the investigation reports in relation to this case. He further told the Court that the matter was only reported to the regulator, but not to the police as the Claimant had admitted liability.
  30. RW3 testified that from his audit, the ATM in issue was linked by the Claimant. He further testified that the total amount lost was Kshs. 3, 118,000/-



31. It is RW3's evidence that the Respondent has system locks and which show who accessed the account holders accounts. It is his statement that he concluded that tampering with the Respondent's system was by ICT Officers.
32. RW3 further stated that at the time of the incident, the Respondent did not have a forensic audit department, but he understands the role of a forensic audit.
33. RW4, one Christine Bosibori, told the Court on cross-exam that she did not receive the complainant's ATM card, and neither did she dispatch the same on the day it is said to have been used.
34. It is RW4's evidence that she did not have a record of cards that remained uncollected on the material day. She further confirmed that an ATM card can be produced and utilized the same day.
35. RW5 on her part stated that she had system rights and can confirm who logged into the system. She further confirmed that the Respondent's customer care desk also issued ATM cards.
36. RW5 further confirmed that though she issued ATM cards, she was never questioned nor investigated in relation to the fraud. She further confirmed that the Respondent's premises have CCTV cameras.

### **The Claimant's Submission**

37. It is the Claimant's submission that under Section 47(5) of the *Employment Act*, the burden of proving unfair termination lies with the employee, but which burden is discharged once the employee establishes a prima facie case. He submits that his termination did not fall within the four corners of the legal threshold set out by section 45 of the *Act*. The Claimant sought to rely in *Josephine M. Ndungu & others v Plan International Inc* [2019] eKLR to support this position.
38. The Claimant submits that he has discharged his obligation under Section 47(5) of the *Employment Act* by laying the basis for his claim that an unfair termination of employment occurred, which brings into play the provisions of Section 43(1) and 47(5) of the *Act*, that places the burden upon the Respondent to prove the reasons and justify the grounds for the termination. He placed reliance in the case of *Muthaiga Country Club v Kudheiba Workers* [2017] eKLR to buttress this position.
39. It is the Claimant's submission that where a contract provides for gratuity, it is payable as a general rule and relies on paragraphs 3 and 4 of the circular released by the Public Service Commission thus PSC/ADM/13(28) dated 21s October, 2022 on entitlement to terminal benefits
40. On the whether the Respondent had valid reason to dismiss the Claimant from employment, the Claimant submits that the Respondent did not have any reason whatsoever to dismiss him from employment.
41. It is the Claimant's submission that the Audit Report filed in the matter by the Respondent, and which the Respondent relied upon in dismissing him, provides only the details of persons who linked the verified accounts, while the verification date, verification time, account and the amount and time of the transactions and the details of the account have not been provided in the report,
42. It is the Claimant's submission that when conducting his investigations, the Respondent's internal Auditor had access to the system logs which implies he was able to find out who accessed the said accounts to activate and withdraw the funds, yet the details have not been provided in his report.
43. It is submitted for the Claimant that the details of the accounts from which funds were allegedly withdrawn was not extracted from the system, which if it was, would have indicated all the particulars for each and every member's account and the persons who withdrew the funds.



44. It is the Claimant's further submission that the Respondent was wrong in dismissing him from employment based on a report whose authenticity is highly questionable and hence the Respondent did not have a valid reason for dismissing him from employment.
45. On the issue of withdrawal of money from the members' accounts. The Claimant submits that the Respondent did not provide any evidence confirming that the Claimant withdrew the said funds from the various accounts, and that no statements have been filed apart from that of Account number 7551. It is submitted further, that the Respondent did not file the system logs and the CCTV footages which are very crucial in determining who logged into the said accounts and withdrew monies as alleged.
46. It is submitted that the Claimant has proved that an unfair termination of employment occurred, and the Respondent has not justified the grounds upon which it terminated the Claimant's employment as required under Section 47(5) of the Employment Act. It is submitted further, that the Claimant was not accorded procedural fairness in the process of terminating his employment.
47. The Claimant finally submits that he is entitled to the reliefs sought and prays that the same be awarded as prayed.

### **The Respondent's Submissions**

48. It is the Respondent's submission that the dismissal letter dated 24<sup>th</sup> July, 2020, addressed to the Claimant was very clear on the reasons for the dismissal, and of relevancy was that on the 14<sup>th</sup> June, 2019, the Claimant knowingly and without authority/permission or consent of the account holder No.1755, plus several other accounts, produced and/or generated local ATM Cards, knowing that the same was illegal and unprocedural and utilized the same to withdrawal funds from members' accounts which is a forgery and an offence under his terms and conditions of service.
49. The Respondent submits that the Claimant appeared before the Board of Management twice, and the Board having considered his submissions and the gravity of the offence, concluded that he could no longer be entrusted with the affairs of the Respondent, having failed to discharge his duties with utmost good faith. It is submitted that the reasons for dismissal were very clear and in conformity with the law. Reliance was placed in Judicial Service Commission vs. Gladys Boss Shollei & Another [2014] eKLR to support this position.
50. It is the Respondent's submission that no iota of evidence was advanced by the Claimant to show that indeed, the complainant applied for a local ATM card, and that she on the 14<sup>th</sup> June, 2019, personally withdrew money from the account.
51. The Respondent further submitted that the Claimant verified this transaction and did not implicate one Josephine Banchiri Onkoba whatsoever as having transacted her account on the 14<sup>th</sup> June, 2019, and Kshs.8,000/= withdrawn. It is the Respondent's further submission that the Claimant failed the honesty test which was inconsistent with the employee's obligation to the employer.
52. It is the Respondent's submission that investigations carried out by the CEO confirmed that on 14<sup>th</sup> June, 2019, Benard Kibagendi and Benard Kimanga (the Claimant) were involved in the production of the ATM card under investigation, but since this was a dormant account they could not succeed without the Claimant verifying the same. The Respondent sought to rely in Nampak Corrugated Wadeville vs. Khoza (JA 14/98) [1998] ZALAC 24 to buttress this position.
53. It is the Respondent's final submission that the sanction meted on the Claimant was reasonable in the circumstances of the case, and pray that judgment is entered in favour of the Respondent in the



counterclaim for Kshs.958,700/- together with the outstanding loan of Kshs.5,341,248,355.93/- and the Claimant's claim dismissed with costs to the Respondent.

### **Analysis and Determination**

54. Upon careful considered the pleadings herein, the witnesses' oral testimonies and the written submissions by both parties. The issues that fall for determination are:
- i. Whether the Claimant's was unfairly terminated.
  - ii. Whether the Claimant is entitled to the reliefs sought.

### **Whether the Claimant was unfairly terminated**

55. A termination or dismissal is unfair when the employer fails adhere to the tenets of procedural fairness as well as meet the substantive justification test as stipulated under Sections 41, 43, 45 and 47(5) of the *Employment Act*, 2007.
56. Section 41 of the *Employment Act* spells out the requirements of fair process as follows: -
- “41(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to to have another employee or a shop floor union representative of his choice present during this explanation.”
57. The Claimant was issued an interdiction letter dated 17<sup>th</sup> October, 2019, and which was to also serve as a show cause letter. The letter informed the Claimant the reason for his termination as being involved in the production of an ATM card without the authority or consent of the account holder and which was said to be an intention to defraud.
58. The interdiction letter further required that the Claimant responds to the charge levelled against him within two weeks. Other than the interdiction letter, nothing shows that the Claimant was invited for a disciplinary hearing or that he was informed of his right to have a representative present during such hearing.
59. In *Mary Mutanu Mwendwa v Ayuda* [2013] eKLR the Court held that the *Employment Act* has made it mandatory by virtue of Section 41 for an employer to notify and hear any representations an employee may wish to make whenever termination is contemplated by the employer, and is entitled to have a representative present
60. It is not disputed that the Claimant appeared before the Board of Directors of the Respondent at least twice for what was said to be a disciplinary hearing. The meetings from the letters availed by both parties, seemed to have been concerned more on the Claimant admitting liability and making commitments, than him making representation on the charges against him.
61. In the case of *Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited* [2013] eKLR the Court held that the right to be accorded a hearing and be accompanied by a fellow employee or union representative during the hearing is a sacrosanct right.
62. Further, in the absence of a letter inviting the Claimant to the disciplinary hearing, the Court cannot determine whether the Claimant was accorded sufficient time between the date of interdiction and the hearing date to prepare for the hearing. It is also noteworthy that the dismissal letter issued to the



- Claimant (at least his copy) is undated, and which points to a possible intention by the Respondent not to portray their decision as rushed.
63. There is also no prove that reasonable effort was made to explain to the Claimant the charges against him, which is an express requirement under Section 41 of the *Act*.
  64. Further, although the subject of the interdiction was a single ATM card number 17551, several other charges such as production of ATM cards for dormant accounts and withdrawal of monies from those accounts, were introduced at the hearing as evidenced by the minutes placed before Court, and which also formed the basis for the counterclaim herein.
  65. In the premise, I find and hold that the decision to terminate the Claimant did not meet the irreducible minimum principles of a fair hearing, and which renders the termination unfair on account of procedure.
  66. The second limb in determining fairness or lack thereof of a termination/dismissal, is whether the Respondent had valid, fair and justified reasons to terminate the Claimant.
  67. The *Employment Act* at Sections 43, 45(2) and 47(5), places both the legal and evidential burden of proof of reasons for termination upon the employer, where an employee alleges that his/her employment was terminated without sound legal justification.
  68. The Claimant vide his pleadings, exhibits and oral testimony, has shown that he was indeed dismissed from the service of the Respondent, and placed before Court reasons he deems make the termination unfair. This then shifted the burden to prove the reasons for termination to the employer/Respondent.
  69. A letter of interdiction issued to the Claimant and dated 17<sup>th</sup> October, 2019, indicates the reason for the contemplated disciplinary process as production of an ATM card for a customer of the Respondent named Josephine Onkoba without authority.
  70. The question is whether this is a fair, valid and justified reason to terminate an employee. Firstly, the production of the ATM, and which is said to have been used to withdraw money from a customer's account, if proved, is a clear act of fraud which would without doubt justify an employee's termination.
  71. The Claimant wrote two letters in response to the show cause/interdiction letter of 17<sup>th</sup> October, 2019; one dated 29<sup>th</sup> October, 2019, and another dated 29<sup>th</sup> June, 2020. In the letter dated 29<sup>th</sup> October, 2019, he denied the charges and proceeded to spell out the procedure for production of an ATM card, and who plays what role in the process. In the second letter, which is hand written, he admits that his user name was used for approval of irregular transactions and further commits to pay Kshs. 958,700/-, some from his shares with the Sacco and the balance through check-off once reinstated back to his position.
  72. The letter interdicting the Claimant is dated 17/10/2019. The Respondent under this letter, required that the Claimant files his response within two weeks. The response to the show cause dated 29<sup>th</sup> October, 2019, was submitted within the set timelines, and which in my view is sufficient prove that it was the Claimant's genuine response to the charge against him, and which further confirms the allegation of coercion and intimidation to admit liability through the letter of 29<sup>th</sup> June, 2020.
  73. The Claimant faced eminent risk of losing his job and was thus vulnerable at the time he was coerced and/or intimidated to admit liability in a bid to save his job. The Respondent no doubt took undue advantage of the Claimant's vulnerability to secure an admission of liability.
  74. The Claimant was interdicted on 17<sup>th</sup> October, 2019, while the dismissal was issued on 24<sup>th</sup> July, 2020, just a month after writing the letter where he admitted liability. In Nyeri Civil Appeal No. 79 of 2016



*Kenya Power and Lighting Company Limited vs. Agrey Lukorito Wasike* the Court in underscoring the proviso to Section 43 held that: -

“Under Section 43 of the Act, the onus is on an employer to prove the reason or reasons for the termination, failing which the termination shall be deemed to be unfair. The test is, however, a partly subjective one in that all an employer is required to prove are the reasons that he “genuinely believed to exist,” causing him to terminate the employee’s services.”

75. Further, in *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR it was held:

“..... The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions.”

76. In my view, the admission of liability that was the basis for the Claimant’s dismissal, and which has been shown to have been obtained through coercion and intimidation cannot hold as a valid, fair and justified reason to terminate in the mind of a reasonable man.

77. Further, if the Respondent lost money at all, the Board failed in using shortcuts by coercing and intimidating employees instead of properly investigating the alleged thefts/fraud and procedurally and properly bringing the fraudsters to book.

78. It is also not disputed that the Respondent’s premises, and specifically the ATM lobby, had CCTV surveillance cameras which should easily have shown who withdrew money from which account at a particular time. The Respondent did not deem it necessary to avail the CCTV footages or at the very least refer to them in the investigation to prove that the Claimant was culpable for the theft.

79. Further, the evidence of the Internal Auditor referred to system logs which would have been crucial in determining who logged into the Respondent’s system, at what time and in respect of which accounts as to show that indeed, the Claimant did log in and transacted on the complainant’s account, either vide the ATM card or otherwise and the other dormant accounts in issue herein.

80. This analysis leads me to the conclusion that the Respondent did not discharge the burden placed upon it under the *Employment Act* to prove that the reasons for terminating the Claimant are reasons it genuinely believed to exist. This finding thus renders the termination unfair on account of failure to prove reasons for the termination.

81. In conclusion, I find and hold that the Claimant’s termination is both procedurally and substantively unfair.

### **Whether the Claimant is entitled to the Reliefs Sought**

82. The Claimant seeks a declaration that his termination by the Respondent was unfair, unlawful and irregular, an order for payment of his full terminal benefits, an order for reinstatement to the position he held before termination, an award of exemplary, compensatory and punitive damages, and costs of the suit and interest at court rate.

83. The finding of an unfair termination does entitle the Claimant to compensation under Sections 49 and 50 of the *Employment Act* (See *Benjamin Langwen v National Environment Management Authority* (2016) eKLR)

84. Further, in *Kenya Ports Authority v Festus Kipkorir Kiprotich* [2014] eKLR it was held that the measures of compensation should be guided by the statutory capping at the time of termination.



85. The Claimant served as an Assistant System Administrator in the Respondent's ICT department. Although the allegations that his username was used for fraudulent transactions was not proved, his position may have placed upon him an opportunity to tamper proof the Respondent's systems, hence avoiding or at least minimizing cases of fraud.
86. This leads the Court to the conclusion that the Claimant has not proved a case for maximum compensation, and is hereby awarded seven months' salary as compensation for the unfair termination.
87. The claim for payment of terminal dues was not substantiated. The letter of appointment did not provide for any sought of terminal benefits and neither did the Claimant lead any evidence to prove the nature of terminal benefits and the amount payable on that account.
88. It is often said that parties are bound by their pleadings and so the Claimant not having specifically pleaded what constitutes terminal benefits in respect of his dismissal, and the employment letter being silent on the same, leaves the Court no option but to dismiss the claim.
89. Having said this, payment in lieu of termination notice is a statutory requirement and the Claimant not having been issued with notice or payment in lieu thereof, I am inclined to award the Claimant the statutory one month salary in lieu of notice, and which is hereby awarded.
90. The Claimant has also sought to be reinstated to the position he held before termination. Section 49(4) (c) of the [Employment Act](#), provides for reinstatement where the court deems it a practical remedy.
91. Section 12(3)(viii) of the [Employment and Labour Relations Court Act](#), states thus on reinstatement:
- “In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders—
- (viii) An order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law.”
92. The Claimant was dismissed from the service of the Respondent on 24<sup>th</sup> July, 2020. It is clear that the Claimant was dismissed over three years ago, and is thus not eligible for reinstatement going by the provisions of the law laid out herein.
93. The claim for reinstatement thus fails and is dismissed.
94. The claims for exemplary and punitive damages were equally not proved, and having awarded the claimant compensation for the unfair termination, the claims for exemplary and punitive damages is without basis.
95. The claim fails and is dismissed.

### **The Counterclaim**

96. The Claimant's interdiction was premised solely on a complaint by a member/account holder of the Respondent, named Josephine Onkoba, whose complaint was that an ATM card was produced for her account and used to make withdrawals without her consent.
97. It was the complainant's case that the money withdrawn from her account was Kshs. 8000. It is thus not clear to the Court, what the amount of Kshs. 958,700/- claimed by the Respondent represent.
98. This leads the Court to concur with the Claimant that the entire fiasco was a fabrication intended to either terminate the Claimant or swindle the insurance company through fraudulent claims.



99. Going by the letter of interdiction which also served as the show cause letter, the singular charge against the Claimant was that of production of a local Sacco ATM card without the authority of the holder of account number 17551. No charge was levelled against the Claimant in relation to withdrawals made in respect of dormant accounts which form the basis of the Respondent's Counterclaim. Further, the Court already found the admission of liability to have been made through coercion and intimidation, and hence the Claimant cannot be held liable for an amount he was coerced to admit and commit to pay.
100. In the premise, the counterclaim fails and is dismissed with costs.
101. In whole, Judgment is entered for the Claimant as against the Respondent as follows:
- i. A declaration that the Claimant's termination is unfair and unlawful.
  - ii. An order for payment of Seven (7) Months' salary as compensation for the unfair termination at Kshs. 1,126,670.86/-
  - iii. One month salary in lieu of notice at KShs. 160,952.98/-
  - iv. Costs of the suit and interest until payment in full.
  - v. The Respondent's Counterclaim is dismissed with costs.
102. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 7<sup>TH</sup> DAY OF DECEMBER, 2023.**

**CHRISTINE N. BAARI**

**JUDGE**

Appearance:

Ms. Nyaenya present for the Claimant

Mr. Urucho present for the Respondent

