



**Mutie v Light International School (Cause 2168 of 2017)
[2022] KEELRC 4066 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4066 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2168 OF 2017**

M MBARŪ, J

JULY 29, 2022

BETWEEN

JONATHAN MUTUA MUTIE CLAIMANT

AND

LIGHT INTERNATIONAL SCHOOL RESPONDENT

JUDGMENT

1. The claimant is a male adult. The respondent is a learning institution that offers studies to pupils and students through its affiliates and engages/employs teachers for purposes of teachings and related services.
2. The claimant was employed by the respondent as a teacher on January 1, 2006 where he served for close to 12 years in a contract dated December 5, 2005 and commencing on January 1, 2006.
3. On December 20, 2010 the claimant employment contract was renewed by the respondent. He worked diligently and commitment in the execution of his duties which led to him being awarded with certificates and was presented with a plaque on March 2, 2016 and without any record of indiscipline.
4. The claimant was appointed to the position of the Head of Department of English/French/Sociology Department in 2009 and which later became the Languages Department and began leading it from scratch. He has since then discharged his duties as a head of department with due diligence, dedication and in accordance with the 'duties and responsibilities' of head of department as contained in a document that was attached to the letter of appointment to that position February 24, 2009.
5. On September 9, 2014 the claimant received a letter from the respondent the subject being that he had been promoted to the post of Head of English Department at Light Academy (Nairobi Boys Secondary) and he was entitled to an allowance of Kshs. 5000 per month. over the years, he played a leading role in shaping this department into a vibrant, exciting yet deliberately purposeful department within which to work, despite gross interference from the office of the principal which manifests itself



in, among other things, the frequent termination of services of teachers of English in the school often on very flimsy grounds and without reference to the head of department.

6. In 2013, the claimant raised with the principal the issue of rampant discrimination in remuneration among the teaching staff with a reflection of favouritism among the local teachers considered loyal as well as racially leaning towards the foreign Turkish teachers. The principal at the time, Mr Cemal Yavac promised to look into the matter but never did. The same year a new principal Mr Engin Gul was appointed to the position and the claimant again expressed the same sentiments to him. His response was a promise that he would address the remuneration discrepancies, albeit gradually. However, the principal soon after withdrew the claimant's HOD's responsibility allowance, a situation that was to prevail for over a year without justification or official communication.
7. In July 2013, the claimant's salary had an illegal deduction of Kshs 1,024 purported to be a punishment by Ms Elizabeth Komu (Deputy Principal) for being absent with permission from the then IGCSE Deputy Headmaster simply because Ms Komu felt that the claimant should not have been absent without her direct authorization.
8. In June 2016, the claimant approached the principal and raised the issue of the discriminatory pay given to him. The principal promised to look into the matter but what followed was a scheme to create the impression that the claimant was inept and thus it would be untenable to have him continue working with the school. The principal mentioned at the HOD's meeting the plans of the respondent to introduce evaluation of teachers by students, wherein the claimant mentioned that such an evaluation is fraught with peril as students may use it to settle scores with teachers they might not like, regardless of those teachers' competence and performance, and thus may not be objective. The principal argued that the results of the evaluation would not be used against any teacher but they would be for the purposes of gaining feedback that may help teachers improve in their way of discharging their instructional mandate.
9. In October, 2016 after the exercise was carried out, the claimant and only two other teachers were separately summoned and taken through the results without being shown the raw data of what these teachers were told was the students input in the evaluation forms. The claimant was the first to be summoned one afternoon just before the official close of school for the day. He was shown what was alleged to be results of his evaluation by one class he was teaching (year 11 B) and asked to sign on some paper to acknowledge seeing them. The respondent promised the claimant a copy of the same but that was not to be. In fact a copy was only made available to him on 30th May 2017, over eight months since the exercise was carried out.
10. The claimant testified that the respondent was out to frustrate his employment using the evaluation process. After signing the evaluation documents the deputy principal only furnished him with a copy of the same after an unsuccessful attempt to put him down on the matter.
11. The claimant's case is that there was a specific focus on only one class, of the three he was teaching at the time. Further, the examinations officer, Mr Geoffrey Kasaya, informed him that another evaluation exercise of teachers by students was carried out by the assistant academics coordinator of the time, Mr Yasin Sohret, in February 2017 but its results have never been made available to the claimant. During the same meeting, he was informed that some parents whose sons were in the classes he was teaching had complained about him. He requested the respondent for details of the complaints so that he could address them or react to them professionally only to be told off and that the school was under no obligation to disclose further details. The claimant does not know what the respondent did to address the same as any serious concern raised by a parent could only be dealt with fully with the involvement of the teacher in question.



12. The claimant is sure the purported results were applied to disguise discrimination and unfair labour practices systemically perpetrated against him and fellow black teachers.
13. The claimant avers that he always had a good relationship with the parents/guardians of the students he taught and that in case of any problem with student there was always correspondence between him and the respective parent.
14. The claimant is accredited by Cambridge International Examinations (CIE) to set and assess coursework in 0510 English as a Second Language (EASL) and in 2008, one of the claimant's students topped the world in May/June examination in 0510 English as a second Language. The claimant attended training sessions organized by CIE at which examiners and experienced teachers of 0846 English Literature, 0500 First Language English and 9695 Literature in English trained participants. He continually trained teachers teaching english in his department as, by virtue of experience and training, he has a lot to share with most of them for the benefit of their students. The claimant was invited by the deputy headmaster of Light Academy, Malindi, Mr Gazi to train teachers of english in April 2016 which he successfully did as part of the school's preparation for the beginning of teaching its first IGCSE class.
15. In October 2016, a Mr Ismail Kucuk, the then immediate former principal of the 8-4-4 campus purported to carry out evaluation of teachers without prior information or participation of the said teachers such that the resulting purported evaluations are just a scheme to find material for witch-hunting teachers who are perceived to be out of favour with the establishment. Evaluation of teachers has always been done by HOD's and the results of those exercises would be used to help grow teachers not victimize them.
16. On May 22, 2017 while the claimant was invigilating an examination, he was summoned to the principals office by the deputy principal who mentioned to him something about interviewing teachers. They found the principal and the academic coordinator seated in the office. The claimant was taken through a list of allegations including the same alleged complaints by parents that had been brought up before, the evaluations by students and Mr Kucuk done in October and November 2016, respectively and informed the claimant that he had performed poorly. He tried to explain himself but it soon became clear that the three persons had already made up their minds.
17. On May 24, 2017, the claimant was presented with a document referenced minutes of his disciplinary hearing and asked to sign it but he asked for details since the allegations therein were not substantiated, this was not allowed. The allegations made were that;
 - a. That there had been poor performance in English especially in the writing and reading skills.
 - b. That the claimant's evaluation by the students done in October rated him as being low.
 - c. That the claimant's evaluation by the deputy director rated him as being low
 - d. That there had been complaints by parents which the claimant was already aware of.
 - e. That as the head of department, the claimant had failed to make arrangements of a teacher who was absent on January 10, 2017.
18. These allegations were being done with a view to refuse the renewal of his three-year contract that was coming up in about a month's time. The claimant avers that he took a mental note of the fact that the respondent was likely to violate the provisions of its own contract with him if a notice of termination of service was issued at the end of May 2017 and so he signed the purported minutes indicating.



19. In reply, the claimant wrote a letter dated May 30, 2017 and noted the following;
- a. That as pertain the issue of poor performance in english, it is natural that there is always room for improvement and that is why the claimant and other teachers of english take them through classes and organize other activities that enhance all their english language skills. That the implementation of the english literature syllabus is something the claimant and the teachers teaching the same had discussed. That the claimant had shared the resolution with the respondent during the meeting of May 23, 2017.
 - b. That as pertains the issue of evaluation, the respondent had responded during a meeting to which the respondent had summoned him earlier in the year and which the deputy principal and the academic coordinator were present.
 - c. That this evaluation had not been repeated with the same results across all the classes the claimant taught. That he was at the head of department meeting at which the introduction of evaluation of teachers by students was discussed and the respondent intimated that the results of the evaluation would be availed to teachers so as to improve their teaching where necessary. The claimant had not been issued with a copy of the results. That with regards to the evaluation done by the deputy director, the claimant had never been issued with a copy of the report nor did the deputy director share any feedback.
 - d. That regarding the issue of the class that went untaught on January 18, 2017, the claimant wrote an explanation verbally requested by the respondent through the academic coordinator. That it was not intentional that that had happened. That the claimant had ensured the teaching of Mr C Joseph Junior's classes went on well before and after the lesson in question, for almost an entire week i.e. between January 16-21, 2017, despite the fact that there was no official communication to the claimant regarding his absence from duty and the length of the absence.
20. On May 31, 2017 the claimant was summoned by the respondent via a phone call where the principal and the academic coordinator were waiting for him. He was informed that the respondent had decided not to renew his contract. The claimant's request for an explanation was met with harsh comments that the respondent had a right to do as it pleased regarding renewal and non-renewal of a contract and that the respondent was not bound to explain anything regarding the decision not to renew.
21. That the claimant was asked to sign a 'non-renewal of contract' dated May 29, 2017 which he signed 'as to receipt only, rebuttal to follow. On June 5, 2017, the claimant wrote his rebuttal and sent it to the respondent who acknowledged receipt of the same via email and later organized a meeting to which the claimant was summoned by the deputy principal and he was handed a letter dated June 6, 2017 containing the same old allegations as the reasons for the respondent's decision not to renew his contract.
22. That on June 8, 2017, the claimant wrote to the respondent and once again raised the issue of unfair pay and refusal by the respondent to increase his pay to be equal to that of other members of staff doing equal value of work. That considering his terminal dues were to be calculated on the basis of his basic pay, and that his pension allowance is also a percentage of the same, he was going to be disadvantaged as compared to many other teachers in the school most of whom employed much later than the claimant. based on the duration he had worked for the respondent and his experience as a Cambridge accredited examiner his gross pay should have been revised to at least Kshs 150,000/=.
23. On June 21, 2017, the respondent wrote to the claimant a letter breaking down how his terminal dues will be paid upon the expiration of the contract of employment. On June 22, 2017 the claimant wrote



- an email to the respondent and raised the issues he had highlighted in his letter of June 8, 2017 which the respondent had failed to reply to.
24. On June 23, 2017, the respondent replied to the claimant's letter and noted that his remuneration was as negotiated as and higher than the Teachers Service Commission rates and above the minimum wage regulations.
 25. On June 28, 2017, the claimant wrote to the respondent over his unremitted pension scheme remittances for 2017. The respondent responded via email and said that they are aware of the situation and that the compensation will be done as soon as possible.
 26. On June 29, 2017, the claimant and the respondent had a few correspondences via email over the calculation of the claimants terminal dues. The respondent's position was that the basic pay had no problems while the claimant still stood ground that the basic pay was unfair and discriminatory.
 27. On June 30, 2017, the day his three year contract expired, the claimant wrote to the respondent challenging the method that the respondent was planning to use to calculate the terminal dues (particularly the accrued leave days' pay). The respondent wrote a reply to the effect that the error with the formula had been noticed and that the accountant was working on it and then was directed to take his annual leave but the claimant asked for written instructions which never issued.
 28. On July 3, 2017 the claimant decided to take the roll call, as required of him by the respondent only to discover that his access to the information management system Coolsis had been blocked. He raised the issue to the respondent via email and he was given a new password to enable him access the system.
 29. On 20th July 2017 the academic coordinator, confronted the claimant on instructions of the director asking what the claimant was doing in the school. The respondent was then interviewing for a new english teacher yet another illustration of discrimination and unprofessionalism.
 30. The claimant also testified that the respondent has acted in total disregard of the law as they exploit employees' lack of the will to hold them (principals) to account. The respondent has acted unfairly towards the African employees in general. The respondent has sacked five (5 black teachers of English) between June 2015 and July 2017. The class teachers and dean of students were all foreigners of Turkish origin apart from a Mr Suleiman Kweya who was Muslim.
 31. The claimant established from the National Social Security Fund (NSSF) offices that for 22 months spread across several years of his working with the Respondent show that the respondent never submitted any contributions an issue he raised vide his letter to the Respondent dated July 24, 2017.
 32. While the claimant was still serving his notice, his profile and details were pulled down from the respondent's website yet other teachers who depart even after serving for as little as 3 months have on the eve of their departure had elaborate farewell ceremonies organized and enviable gifts showered on them. An issue the claimant raised in his letter to the respondent dated July 27, 2017.
 33. Other teachers who were sacked at the end of June 2017 had their dues processed and released speedily and without harassment and cold treatment. The claimant was forced to bear with the costly inconvenience of reporting to school on August 3, 2017 after his contract had been terminated.
 34. The claimant also testified that throughout July 2017, he worked without a written contract (since July 1, 2017) as his three-year contract expired on June 30, 2017, yet the notice of termination of service given to him by the school on May 31, 2017 expired on July 31, 2017. He was given no leave days during the month of July 2017. The other teachers in the school (or at least a majority of them) were given their annual leave application forms to fill out and sign by the deputy principal, and consequently started their leaves on July 15, 2017.



35. The claimant testified that if the respondent had valid reasons for subjecting him to the treatment meted against him, they were duty bound by law to take him through a separate and a fair administrative process before terminating his employment. The show cause letter or any warning letters prior to the termination or a disciplinary hearing.
36. The claimant also testified that the respondent treated him with raw racial and other discrimination in the following manner;
- a. Paying him less than his peers and even teachers who found him at the school.
 - b. Punishing him for imaginary offenses while foreign (Turkish) staff are let go for grave offenses.
 - c. Failing to provide similar amenities and opportunities that the Turkish staff are afforded.
 - d. Subjecting him to inhumane and openly biased processes that the Turkish staff (and staff that are perceived to be pro-establishment) are not subjected to
 - e. Purporting to terminate his contract for poor performance while he was never taken through a basic appraisal process and then hiring foreigners to teach the same subject for which he has international qualifications and accreditation to teach.
 - f. Failing to confirm him as a permanent and pensionable employee as per the policy on the Teachers' Handbook yet other teachers who had worked for 3 years were confirmed to be permanent and pensionable employees.
- 37 The claimant is seeking the following;
- a) A declaration that the claimant's termination was both substantively and procedurally unfair and unlawful.
 - b) A declaration that there should have been a revision of the Claimant's gross pay to at least Kshs 150,000/=
 - c) An award of Kshs 12,742,000/= made up as follows;
 - i) Accrued leave for one year Kshs.150, 000/=
 - ii) 1 month in lieu of notice Kshs.150, 000/=
 - iii) 1 month salary for July 2017 Kshs.150, 000/=
 - iv) Unremitted pension benefits Kshs. 432,000/=
 - v) Head of Department Responsibility allowance for 1 year Kshs 60,000/ =
 - vi) 12 months' compensation Kshs1, 800,000/=
 - vii) General damages for racial discrimination Kshs.10, 000,000/=
 - viii) Certificate of service
 - ix) Costs of the suit
 - x) Any other relief that the court may deem fit to grant.



Response

38. In response, the respondent's case is that the claimant was an employee as a teacher. The sole reason the claimant was appointed as the head of english department was because he was the most senior teacher at the time and the same does not reflect on his merit and dedication.
39. The claimant was not the only teacher requested to offer private tuition to the new Turkish Teachers, other teachers did the same and were well compensated by the said Turkish teachers, and the respondent had no input in it. Any work given to the claimant was well within his required duties and other teachers conducted the same duties without any victimization whatsoever.
40. The claimant should not have signed the new contract dated 1st July, 2014 when he felt victimized and discriminated against.
41. Contrary to the allegations made by the claimant, in July, 2013 the claimant was absent from work without permission. The respondent has procedure on absenteeism which was not followed by the claimant. He failed and/or refused to fill the required form and there was no record to show his reason for being absent on that day. The deduction made was well within the disciplinary action as per the [Employment \(General\) Rules, 2014](#).
42. The appraisals of all teachers were done each year in two instances, one by the students and the other by the academic coordinator. The students were required to fill out a questionnaire while the academic coordinator would sit in the class and evaluate the teacher's teaching methods. Thereafter the school would sit in and evaluate the teachers based on the results from the student's questionnaire the academic coordinator, examination officer and the students' performance for that year and an evaluation report is then issued based on those findings, each teacher is then issued with a copy of the said report to which they acknowledge receipt of the same.
43. The evaluations conducted by the examination officer are normally random in nature and the said findings are reflected on the evaluation report.
44. There were Complaints received from parents that there was no proper feedback and evaluation of their children's performance given by the claimant despite communicating to him. The emails attached shows initial stages of communication but no follow up after that. The deputy teacher warned the claimant and told him to take parent's complaints seriously and ensure that each complaint is satisfactorily resolved. The respondent did not wish the respective students to be victimized by the claimant. It was the claimant's duty to ensure that each parent's complaint is treated with utmost urgency and importance.
45. The invitation to Light Academy in Malindi was extended to all head of departments of the school and not to the claimant alone and the same formed part and parcel of the school programme with the sister schools. The claimant being the HOD himself could not carry out the evaluations on himself and the results of such evaluations could be used by the school at its own discretion.
46. The evaluations were done in 2015 and 2016 showed that the claimant performed poorly and as per the contract entered into 1st July, 2014 it was the respondent's discretion on whether or not to renew the claimant's contract once the same expires. It was for a period of three years, and the respondent fully complied with the requirement of 'Two months' notice which was given to the Claimant by letter dated May 29, 2017.
47. Terminal dues ought to be calculated from the basic pay of the claimant as per the contract dated July 1, 2014 and not to what the claimant thinks he ought to have been paid.



48. The contract entered into between the parties on July 1, 2014 was entered into willingly and without any form of coercion. The claimant's salary was well captured as part of the terms of the contract to which the claimant upon execution of the contract willingly and voluntarily accepted to be bound by the said salary. The respondent is not bound to accept any arbitrary salary increment demanded by the claimant, both parties are bound by the contract entered into and any terminal benefits and/or pension scheme ought to be calculated from the said contract. The claimant has failed to prove that there is discriminatory in reference to salary payment. The Respondent avers that the claimant's salary is more or less the same as the other HOD teachers.
49. The notice of non- renewal dated May 29, 2017, and letter dated June 21, 2017 to the claimant the respondent had already acknowledged the accrued leave days that the respondent was to pay as part of the claimant's terminal benefits.
50. The respondent was aware that the contract entered on July 1, 2014 lapsed on June 30, 2017; however he did not wish to prejudice the claimant by giving insufficient notice and proceeded to give him two months' notice of non-renewal that would lapse on July 31, 2017 so that he may have ample opportunity to arrange and manage his affairs.
51. The claimant kept complaining that his contract had since lapsed as of June 30, 2017 and is not required to be working on the month of July, 2017 which prompted the respondent to block his access to the School and refrain the claimant from conducting any active teaching to avoid further complaints by the claimant. The Respondent had previously committed to pay the Claimant his salary for July, 2017 without him having to fully conduct his duties.
52. On the alleged discrimination the same is denied. The number of African teachers in the school is greater than the foreign representatives of the School. The respondent is aware of the anomaly and has since rectified the issue with the Accounts department of the School.
53. The respondent further avers that the claimant's attitude was abusive, insolent, sarcastic and uncooperative; the farewell ceremonies are organized by the staff and not the respondent per se.
54. The respondent's response is also that the three year contract entered into lapsed on June 30, 2017 that the two months' notice of non-renewal of contract served on the claimant expired on July 31, 2017. That respondent had fully committed to pay the claimant his salary for the month of July, 2017 although the claimant conducted little or no teaching at all. The claimant had an option of taking his leave on the month of July, 2017 if he so wished otherwise the respondent already committed to pay the claimant his accrued leave days.
55. In evidence, the respondent called Collins Odhiambo the deputy principal at the school and Suleiman Kwaya a teacher and who supported the defence filed.

Determination

56. It is not contested that the respondent employed the claimant under various terms and conditions and on July 1, 2014 issued him with a term contract of 3 years.
57. A term contract is lawful and legitimate. Such is allowed pursuant to the provisions of section 9 and 10 of the *Employment Act*, 2007.
58. A term contract starts and ends on its terms. The parties therefrom are bound under the agreed terms and conditions thereof.



59. On these facts and the law, the term contract between the parties was ending on its terms on June 30, 2017.
60. However, in a letter dated May 29, 2017 the respondent issued notice to the claimant on the non renewal of his term contract ending on July 31, 2017. The claimant was therefore expected to work until July 31, 2017. By the action of the respondent, employment was extended.
61. The claimant protested the actions of the respondent through his various communications and noted that his contract had been extended post the term contract. He also noted the unfairness visited against him as part of the discriminatory practices on local teachers against Turkish teachers who were placed on better terms and preferential treatment.
62. On the extended contract beyond June 30, 2017 the claimant fell under the protections of section 37 of the *Employment Act*, 2007 with rights and benefits under the law. His employment renewed outside a written contract became protected.
63. Employment commencing after July 1, 2017 became regulated in law. Termination thereof became regulated under the provisions of sections 35, 41 or 44 and section 43 and 45 of the *Employment Act*, 2007. Before the respondent could lawfully terminate employment, notice had to issue, a valid and fair reason should have issued and the claimant invited to defend his employment based on misconduct, poor work performance or his capacity. This is the essence of section 41 (1) of the Act that;
- 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 have another employee or a shop floor union representative of his choice present during this explanation.
64. In the case of *Kenfreight (EA) Limited v Benson K. Nguti [2016]* eKLR and *Mary Chemweno Kiptui v Kenya Pipeline Company limited [2014]* eKLR the court held that an employer should not terminate employment contract without a valid and fair reason and without according the employee a fair hearing.
65. The essence of the applicable law is aptly captured by the Court of Appeal decision in *Pius MachafuIsindu v Lavington Security Guards Limited [2017]* eKLR where the court held that;
- There can be no doubt that the *Act*, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. 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. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.
66. In this case, the protests by the claimant with regard to his unsecured service after his term contract lapsed on June 30, 2017 were not given any meaning attention by the respondent. Such lapse can only be applied to the advantage of the claimant.
67. No reason is given for termination of employment post the lapse of the term contract.
68. The claimant had challenged various work place practices particularly discriminatory practices against him by the respondent. The respondent has given a chronology of events that there were complaints allegedly made against the claimant by students and parents that the claimant had been evaluated and



found to be of poor work performance and that he had absented himself from work in the years 2013. Such matters were never formally addressed pursuant to sections 41 of the [Employment Act, 2007](#). To then use such matter to fail and secure employment and leave the claimant at large even for a day after the term contract lapsed, the respondent came into conflict with the law.

69. The court finds employment terminated without due process and there was no justification for the same.
70. On the claim that there were discriminatory practices within the respondent business against the claimant, upon the claimant making such allegations, he discharged his burden under section 5 of the [Employment Act, 2007](#). The respondent was then bound to disprove such matter.
71. There is no effort whatsoever taken by the respondent to discharge the allegations that they discriminated against the claimant while in employment. Such a matter is so serious and severe as where the respondent as the employer failed to address a grave issue such as discrimination against the claimant, such directly violated section 5 of the [Employment Act, 2007](#) read together with articles 27 of the [Constitution](#) and this became an unfair labour practice contrary to article 41 of the [Constitution, 2010](#).
72. Any violation of the Bill of Rights and the rights secured under section 5 of the [Employment Act, 2007](#) must be redressed by the court in damages. In the case of [Standard Group Limited v Jenny Luesby \[2018\] eKLR](#) the court in assessing damages in a case where there were constitutional violations allocated the same at Kshs 1, 500,000. The Supreme Court in [Simon Gitau Gichuru v Package Insurance Brokers Ltd \[2021\] eKLR](#) made an award of Kshs 2, 000,000 on similar grounds of discrimination against the employee.
73. On the above findings, the court finding that employment terminated unfairly and taking into account the provisions of section 45(5) of the [Employment Act, 2007](#) that part of the terminal dues to the claimant were paid without delay, a compensation of 3 months is hereby found justified.
74. The claimant was last earning a gross salary of Kshs 103, 000 as evidenced by the payment statement of July, 2017. Terminal dues should be calculated based on the last gross salary pursuant to section 49 of the [Employment Act, 2007](#).
Total compensation is awarded at ksh.309, 000.
75. On the findings that there was discriminatory treatment against the claimant, damages are hereby assessed at Kshs 1, 500,000.
76. On the claim for accrued leave days, in the letter dated May 29, 2017 on the non-renewal of contract, such matter is comprehensively addressed. Such shall suffice.
77. Notice pay is due in terms of section 37 read together with 35 and 41 of the Act at one month's gross salary at Kshs 103, 000.
78. The claim for salary for July, 2017 has since been paid. There is a payment statement filed in this regard.
79. On the claim for head of department allowance for a year, in the payment statements filed, there is payment of a seniority allowance and a responsibility allowance.
80. On the contract dated July 1, 2014 there is no provision for head of department is assigned. Where the respondent paid the same, account must be taken of the seniority and responsibility allowances accounted for in the payment statement.



81. A certificate of service should issue pursuant to section 51 of the *Employment Act*, 2007 the reasons leading to termination of employment notwithstanding. The claimant should clear and be issued with his certificate in this regard.
82. Accordingly, judgement is hereby issued for the claimant against the respondent in the following terms;
 - a. A declaration that there was discrimination against the claimant by the respondent;
 - b. A declaration that employment terminated unfairly;
 - c. The claimant is awarded damages for discriminatory treatment at Kshs 1,500,000;
 - d. Compensation Kshs 309,000;
 - e. Notice pay Kshs 103,000;
 - f. The respondent shall issue the claimant with a certificate of service pursuant to section 51 of the *Employment Act*, 2007; and
 - g. Costs of the suit.

DELIVERED IN COURT AT NAIROBI THIS 29TH DAY OF JULY, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and

