



REPUBLIC OF KENYA



**KENYA LAW**  
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**Koech v Kipkales & another (T/A M/S Kale Maina & Bundotich Advocates)  
(Cause 640 of 2017) [2022] KEELRC 1621 (KLR) (27 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1621 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 640 OF 2017  
JK GAKERI, J  
JULY 27, 2022**

**BETWEEN**

**JUDY CHEPNGENO KOECH ..... CLAIMANT**

**AND**

**STEPHEN KIPKORIR BUNDOTICH ..... 1<sup>ST</sup> RESPONDENT**

**AMOS CHETALAM KALE KIPKALES ..... 2<sup>ND</sup> RESPONDENT**

**T/A M/S KALE MAINA & BUNDOTICH ADVOCATES**

**JUDGMENT**

1. The claimant commenced this suit by a memorandum of claim dated April 3, 2017 and filed on April 4, 2017 alleging unfair redundancy and wrongful termination by the respondents.
2. The claimant amended the memorandum of claim on May 31, 2017 and filed on June 5, 2017.
3. The claimant prays for;
  - i. A declaration that the respondent's termination of the claimant's employment by way of redundancy was unfair.
  - ii. One month's salary in lieu of notice Kshs 70,000/=
  - iii. Unpaid salary arrears Kshs 270,000/=
  - iv. Unpaid house allowance Kshs 222,750/=
  - v. Unpaid 3 months maternity leave Kshs 210,000/=
  - vi. Unpaid leave days Kshs 140,000/=
  - vii. Severance pay Kshs 70,000/=



- viii. 12 months compensation Kshs 840,000/=
- ix. Service pay under section 35 (5)
- x. Reimbursement of NHIF, NSSF and KRA
- xi. Certificate of Service
- xii. Costs of this suit
- xiii. Interest at court rates.

**The Claimant's Case Is Pleaded As Follows;**

4. That on or about July 4, 2014, the respondent employed the claimant as an Advocate Associate at the respondents Eldoret Branch at an agreed salary of Kshs.45,000/= reviewed upwards to Kshs 70,000/= in January, 2015.
5. It is the claimant's case that between July 2014 and July 2016, she executed her duties meticulously and upheld professional values by dealing with all day-to-day operations of the Eldoret office.
6. The claimant avers that by letter dated July 13, 2016, the respondent purported to terminate the claimant's employment on account of redundancy in violation of the provisions of section 40 of the Employment Act, 2007 and having terminated her employment on June 1, 2016 without notice.
7. That the claimant served the respondent with utmost loyalty, obedience and diligence for 2 years.
8. It is further avered that on June 23, 2016, the claimant proceeded on maternity leave for 3 months at which point the respondent owed the claimant Kshs 270,000/= as well as unpaid leave and was unlawfully terminated.
9. It is the claimant's case that the respondent did not remit all statutory dues to the KRA, NSSF and the NHIF during her tenure of employment.

**Respondent's Case**

10. The respondent avers that the claimant was its employee from April 2014 to June 2016 but denies all other allegations germane to termination and avers that it employed the claimant as alleged and paid the salary quoted.
11. It is the respondent's case that it envisioned the claimant would run a self-sustaining office with sufficient revenue to meet costs and pay salaries but in 2015 the branch started experiencing financial difficulties and had to rely on the Nairobi office for salaries and operational costs on the assumption that the same was recoverable from the Eldoret office subsequently, which did not come to pass.
12. That the claimant mismanaged the Eldoret office and lacked commitment to her job. That the claimant had two pupils and the secretary after the clerk was dismissed.
13. The respondent avers that it served a redundancy notice dated July 13, 2016, setting out the reasons for termination and assessed the Claimant's due at Kshs 311,586/= which was duly settled and the Eldoret Branch was closed in July 2016.
14. It is in the respondent's case that the sum of Kshs 1,752,750/= claimed by the claimant is untenable.
15. The respondent denies that it terminated the claimant's employment on account of pregnancy and prays for the dismissal of the suit with costs.



16. The claimant filed a response to the statement of defence dated June 22, 2017 and admitted having received cheque No 000230 and 000233 for Kshs 105,000/= and Kshs 95,000/= respectively but denies having received cheque number 000020.
17. It is the claimant's case that the Eldoret office was functional until September 2016.

### **Claimant's Evidence**

18. The claimant adopted the written statement and was cross-examined. In her evidence in chief, the claimant testified that she had notified the respondent about her impending maternity leave one and a half months earlier and had salary arrears and was given Kshs 40,000/=.
19. That the claimant delivered on June 23, 2016 four weeks before the due date and had no NHIF cover and was discharged on June 24, 2016 after paying hospital dues.
20. It was the claimant's testimony that she received the termination letter on July 13, 2016 together with a cheque of Kshs 70,000/=.
21. On cross-examination, the claimant stated that the office was abolished and was thus terminated on account of redundancy while on maternity leave.
22. The witness confirmed that had no evidence to show that salary was paid late but had telephone conversations with one of the partners on the challenges the office was facing.
23. That her salary had not been paid for sometime but was paid Kshs 70,000/= by cheque.
24. The witness further confirmed that she had not provided particulars of the unpaid salary arrears as well as leave and had not pleaded house allowance.
25. It was her testimony that at no time did she apply for leave and the same was denied and was not sure of the number of days.
26. Further, it was the claimant's testimony that in the absence of NSSF payments, she was entitled to severance and service pay.
27. On re-examination, the claimant testified that the payments of Kshs 95,000/= and Kshs 105,000/= came after termination and were salary arrears.

### **Respondent's Evidence**

28. RWI, Mr Bundotich adopted the written statement and was cross-examined. The witness confirmed that the Eldoret branch was opened in 2014 and the claimant employed in July 2014 becoming an associate in December 2015 and neither an employment letter nor a written job description was issued by the respondent.
29. The witness further confirmed that the Eldoret branch was not performing as contemplated and was relying on the Nairobi branch. In addition, the witness could not recall whether the claimant had any salary arrears.
30. It was his testimony that the claimant visited the Nairobi frequently and was aware of the challenges the firm was facing.
31. The witness confirmed that the hospital was to cater for part of the maternity expenses.
32. It was RWI's testimony that the claimant's salary was raised even though the firm was not doing well and no NSSF contributions were made but PAYE was deducted.



33. The witness further confirmed that the letter dated July 13, 2016 was a redundancy notice to the claimant, but the respondent did not serve the Labour Office with any notice of the intended redundancy.
34. That the cheques on record were for the claimant's terminal dues as there were no salary arrears.
35. At this point, counsel for the claimant objected to the payroll summary dated August 25, 2016 and the parties agreed that it be expunged from the record.
36. On re-examination, RWI testified that a firm of accountants computed the claimant's terminal dues. It was his testimony that the firm had a policy on salary increments for staff.
37. RWI further testified that the claimant's salary was all inclusive, housing, transport and other allowances and the claimant had not raised the issue of housing allowance at any point.
38. RWI testified that the claimant had furnished no documentation that she was pregnant.
39. The witness testified that the respondent had female employees who proceed on maternity leave on full salary. That out of 10 employees, 7 lawyers were women.
40. That the Nairobi office paid salaries and stipend for Eldoret staff and pupils whenever the branch had no funds.
41. RWII, Linah Jepkemoi testified that she joined the respondent's firm in 2010 and had proceeded on maternity leave about 4 times as well as leave and after maternity leave, female employees work for ½ day for a further 2 months.
42. It was her testimony that the salary paid was inclusive of house allowance.
43. On cross-examination, the witness confirmed that she became a partner in 2018 and the law firm paid her NHIF and NSSF contributions and had no employment contract. The witness was not aware of when the claimant was declared redundant.

### **Claimant's Submissions**

44. The claimant identifies three issues, namely; whether termination of the claimant's employment on account of redundancy was unlawful, illegal and unprocedural, whether the termination was discriminatory based on the claimant's pregnancy and whether the claimant is entitled to the reliefs and terminal dues sought.
45. As to whether the termination of employment was unfair, it is submitted that it was since the provisions of section 40(1) of the [Employment Act, 2007](#) were not complied with.
46. The provisions of section 2 and 40 of the [Employment Act](#) are relied upon for the definition of redundancy and the prerequisites of a lawful redundancy as are the decisions in [Thomas De La Rue \(K\) Ltd v David Opondo Omutelema](#) [2013] eKLR, [Kenya Airways Ltd v Aviation & Allied workers Union Kenya](#) [2014] eKLR and [Jane I Khalechi v Oxford University Press EA Ltd](#) [2013] eKLR among others to urge that the respondent did not follow the law when it declared the claimant redundant.
47. That it did not issue the mandatory notice to the Labour Office.
48. As to whether the claimant was discriminated on the ground of pregnancy, reliance is made on section 5 (3) of the [Employment Act](#). It is submitted that the claimant's NSSF and NHIF contributions were not remitted and was terminated from employment while lactating.



49. The decision in *Millicent Nyambura Njoroge v Flamingo Horticulture (K) Ltd* [2021] eKLR as well as *Veronica Wambui Waweru v Green Belt Movement* [2014] eKLR are relied upon to urge that the claimant was discriminated.
50. That RWII should have known the consequences of their decision to declare the claimant redundant and the court should question why the termination of employment was made at this sensitive moment.
51. It is the claimant's submission that the provisions of section 47(5) of the *Employment Act* have been complied with and is thus entitled to 12 months compensation as prayed.
52. As regards terminal dues and compensation, it is submitted that claimant is entitled to all the reliefs sought as notice was not given, housing allowance was not paid, outstanding 3 months maternity leave, accrued leave, unpaid arrears and severance pay.
53. The provisions of the *Employment Act* and court decisions are relied upon to urge the court to award the prayers sought.

### **Respondent's Submission**

54. The respondent isolates two issues for determination, namely;
  - i. Whether the claimant's termination of employment was fair and lawful.
  - ii. Whether the claimant is entitled to the reliefs sought.
55. As regards the first issue, the respondent contends that the termination of the claimant's employment on account of redundancy was fair and the relevant procedure was complied with.
56. That the Eldoret branch started experiencing financial challenges in 2015 and was being sustained by the main office in Nairobi until it became untenable and had to close.
57. That a redundancy notice dated July 13, 2016, was issued to the claimant explaining the reasons and dues were computed at Kshs 311,586/= and paid. The branch was closed in July 2016.
58. The respondent deny that the termination was based on the claimant's pregnancy and submit that RWII testified on her experience at the respondent's employment since 2010 and had been proceeding on maternity leave.
59. That they had no knowledge that the claimant was pregnant and if she was, she did not give notice of maternity leave.
60. The court is urged to find and hold that the termination of employment fair and lawful.
61. As regards the reliefs sought, it is submitted that the claimant had denied having received Kshs 105,000/= but admitted the same in court. That cheque No 000020 was presented by the claimant and honoured on August 30, 2016.
62. On the declaration, it is urged that the respondents had demonstrated that due process was followed and section 47 (5) of the *Employment Act* had been complied with. The decision in *Catherine Wawira Ndwiiga v Board of Starebe Girls Centre* [2020] eKLR is relied upon to urge that the employee must discharge the burden imposed by section 47(5) of the Act.
63. The respondent urges that it paid one month's salary in lieu of notice vide cheque No 005 dated March 29, 2016.



64. As regards salary arrears, it is urged that the claimant led no evidence of the alleged arrears. Reliance is made on the decision in *Joseph Makeri Wanjiru v Shem Kambo t/a Pals Restaurant Enterprises Ltd* [2018] eKLR to urge the need to furnish evidence on the unpaid salary arrears. The court is urged to disallow the claim.
65. On unpaid house allowance, it is urged that the claimant pleaded that she was receiving an all-inclusive salary of Kshs 45,000/= from 2014, and was then upgraded to Kshs 70,000/= and the parties did not negotiate additional allowances and did not raise the issue at any point during her employment.
66. The decision in *Morris Kavale Kasyoka v Narcol Aluminium Rolling Mills Ltd* [2014] eKLR is relied upon to urge the court to reject the prayer for housing allowance. That it was paid as part of the salary.
67. On unpaid 3 month's maternity leave, it is submitted that the same is an entitlement under section 29 of the *Employment Act* but must be triggered by a letter or memo.
68. On the basis of the provisions of section 29 of the *Act*, it is submitted that the claimant did not satisfy the statutory requirements and the prayer for pay is unsustainable and the respondent was unaware of her pregnancy as at the date of termination.
69. As regards leave, it is submitted that the amount claimed is amorphous and unsupported by evidence. The decision in *Osota Paul Osiemo v Inter Security services Ltd* [2021] eKLR is relied upon to underscore the lack of particulars to buttress the claim.
70. On severance pay, the respondent submits that the claimant had already been paid Kshs 420,000/= as final dues. The court is urged to disregard the claim as is the claim for service pay.
71. With regard to reimbursement of unpaid statutory dues, reliance is made on the sentiments of the court in *Mwende Mbiti v Citrus Inn Ltd* [2018] eKLR where the court declined to award refunds of NSSF and NHIF contributions.
72. As regards the certificate of service, it is submitted that the respondent is not opposed to issuing the claimant with a certificate of service as ordained by the law.
73. Finally, the court is urged to dismiss the suit with costs to the respondent as the termination of the claimant's employment by the respondent was in full compliance with the law.

### **Analysis And Determination**

74. The issues for determination are;
  - (i) Whether termination of the claimant's employment on account of redundancy was fair and lawful.
  - (ii) Whether the claimant is entitled to the reliefs sought.
75. As to whether the termination of the claimant's employment was fair, the starting point is an understanding of the term and process of redundancy as one of the ways of bringing an employment contract to an end.
76. Section 2 of the *Employment Act, 2007* and section 2 of the *Labour Relations Act, 2007* define redundancy as:

“The loss of employment, occupation, job or career by involuntary means through no faults of an employee, involving termination of employment at the initiative of the employer,



where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

77. This definition is unequivocal that a redundancy occurs at the instigation of the employer and leads to an involuntary loss of employment.
78. Section 40(1) of the *Employment Act*, on the other hand provides the framework to be complied with by an employer to accomplish a lawful redundancy.
79. In *Freight In Time Ltd v Rosebell Wambui Munene* [2018] eKLR, the Court of Appeal stated as follows,
- “In addition, section 40(1) of the *Employment Act* prohibits, in mandatory tone, the termination of a contract of service on account of redundancy unless the employer complies with the following conditions namely:
- (a) If the employee to be declared bankrupt is a member of a union, the employer must notify the union and the local Labour Officer of the reasons and the extent of the redundancy at least one month before the date when the redundancy is to take effect;
  - (b) If the employee is not a member of the union, the employer must notify the employee personally in writing together with the Labour Officer;
  - (c) In determining the employee to be declared redundant, the employer must consider seniority in time, skill, ability, reliance of the employee;
  - (d) Where the terminal benefits payable upon redundancy are set under a collective agreement, the employer shall not place an employee at a disadvantage on account of the employee being or not being a member of a trade union;
  - (e) The employer must pay the employee any leave in cash;
  - (f) The employer must pay the employee at least one month’s notice or one month’s wages in lieu of notice; and
  - (g) The employer must pay the employee severance pay at the rate of not less than 15 days for each completed year of service.”
80. These conditions must be complied with if a redundancy must pass muster. Relatedly, a redundancy must be justified and procedurally fair.
81. In the instant case, the respondent testified that the Eldoret branch was facing financial challenges and sustaining it was no longer tenable and was closed in July 2016.
82. By letter dated July 13, 2016, the respondents informed the claimant that her position had been abolished effective June 1, 2016. The letter quotes poor business environment as the reason for declaring the position of advocate redundant.
83. RWI confirmed on cross-examination that the above mentioned letter was a redundancy notice to the claimant.
84. Puzzlingly, the claimant’s position was abolished while the holder was still in office. It was not a notice of intention to declare the claimant redundant. The claimant was declared redundant while still in



- office and unaware of the decision. The notice is reticent on other positions in the office and how the respondent proposed to conduct the process. The claimant was faced with a *fait accompli*.
85. Although the respondents submitted that it conducted the redundancy in accordance with the prescriptions of law and urges the court to find as much, the evidence on record tells a different story.
86. RWI, for instance, confirmed on cross-examination that the respondent did not send a copy of the redundancy notice to the local Labour Officer as required by section 40(1) of the *Employment Act, 2000*.
87. In *Freight In Time v Rosebell Wambui Munene* (*supra*), the Court of Appeal stated as follows;
- “The requirement to issue a separate labour officer simultaneously with the termination notice is mandatory. Failure to issue renders the redundancy unlawful. On record, there is no evidence to prove that a separate notice was issued to the Labour Officer.”
88. These sentiments capture the facts of the instant case on all fours.
89. For the above mentioned reasons, it is the finding of the court that the notice of redundancy dated July 13, 2016 was ineffectual. (See *Thomas De La Rue (K) Ltd v David Opondo Omutelema* (*supra*).
90. Needless to emphasize, the respondent did not comply with any of the other provisions of section 40 of the *Employment Act*.
91. There were no consultations between the claimant and the respondent, outstanding leave days were not paid in cash, no selection criteria, neither severance nor notice was not paid.
92. For the foregoing reasons, it is the finding of the court that termination of the claimant’s employment by the respondent on account of redundancy was unfair due to non-compliance with the procedural requirements prescribed by law.
93. By reason of non-compliance with the law, the proposed redundancy transitioned to an unfair termination of employment within the meaning of the provisions of section 45 of the *Employment Act* and a declaration to that effect is hereby issued.

### **Appropriate Relief**

94. Having found that termination of the claimant’s employment by the respondent was unfair, the court proceeds as follows;
- (a) A declaration that termination of the claimant’s employment on account of redundancy was unfair is hereby issued.
- (b) One month’s pay in lieu of notice Kshs 70,000/=
95. The claimant testified that no notice of redundancy was issued by the respondent before she was declared redundant, evidence the respondent did not controvert. The sum of Kshs 70,000/= is awarded as pay in lieu of notice.

### **(c) Unpaid salary arrears Kshs 270,000/=**

96. Neither the memorandum of claim nor the written or oral evidence adduced by the claimant provide particulars of this prayer. From the claimant’s evidence, it is unclear which month’s salary was not paid by the respondents who submitted that no salary was outstanding. In the absence of cogent evidence to support the claim, the prayer is disallowed.



**(d) Unpaid House Allowance Kshs 222,750/=**

97. It is the claimant's testimony that the agreed starting salary was Kshs 45,000/= and was later increased to Kshs 60,000/= and Kshs 70,000/= in about two years.
98. The respondent submits that no other benefits were agreed upon and the salary was all-inclusive and the claimant understood it as such.
99. In addition, RWI confirmed on cross-examination that the respondents did not issue payslips. RWII confirmed that payslips were issued on request contrary to section 20 of the *Employment Act*, which provides for the provision by the employer to the employee a written pay statement at or before the time at which any payment of wages or salary is made to the employee. Section 20 (2) of the *Act* sets out the particulars of the pay statement.
100. RWI confirmed on cross-examination that the respondent did not issue a letter of appointment.
101. It is trite law that the employer is required to provide each employee with reasonable accommodation at his own expense or pay sufficient sum as rent in addition to the salary or wages payable as provided by section 31 (1) of the *Employment Act, 2007*.
102. However, section 31(1) does not apply in the circumstances set out in section 31 (2) and (3) of the *Act*.
103. In the instant case, the respondents availed to the court neither a payslip nor a written contract to urge that the salary paid to the claimant was inclusive of house allowance.
104. RWII, who had worked for a long duration whom the court anticipated would provide cogent evidence on this issue did not address it.
105. In the absence of a written contract of service between the parties or at least a payslip, the court is satisfied that the respondent has not on a balance of probability established that the claimant's salary was consolidated.
106. For the above stated reasons, the court is satisfied that claimant is entitled to housing allowance at the rate of 15% as accepted in previous decisions such as *Grain Pro Kenya Inc Ltd v Andrew Waitthaka Kiragu (supra)* where the Court of Appeal stated as follows:
- “To us 15% is reasonable percentage that an employee spends from part of salary to pay house rent.”
107. The claim is awarded housing allowance at the rate of 15% of the basic salary effective July 14, 2014.

**(e) Unpaid Three Months Maternity Leave Kshs 210,000/=**

108. The claimant's submission on maternity leave is grounded on the maternity leave entitlement under section 29 of the *Employment Act* and the fact that no payment was made by the respondent.
109. Section 29 of the *Employment Act* provides *inter alia*.
1. A female employee shall be entitled to three months maternity leave with full pay.
  2. ....
  3. ....
  4. A female employee shall only be entitled to the rights mentioned in subsections (1) (2) and (3) if she gives not less than seven days' notice in advance or a shorter period as may be reasonable



in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter.

5. The notice referred to in subsection (4) shall be in writing.
  6. A female employee who seeks to exercise any of the rights mentioned in this section shall, if required by the employer, produce a certificate as to her medical practitioner or midwife.
110. The claimant testified that she notified the respondent that she was due for maternity leave in July 2016 but gave no formal notice of the intended leave.
  111. Intriguingly, the claimant did not identify the person to whom the alleged notice was given, how and when. RWI testified that he learnt that the claimant was pregnant sometime in June 2016 and they had agreed that part of the bill would be met by the respondents.
  112. In the courts view, part of the reason for the requirement of a formal notice of maternity leave is to enable the employer make the necessary arrangements to ensure that its operations continue uninterrupted by the absence of the employee on maternity leave. Some employers hire a temporal replacement or designate another employee to hold the forte during the absence of the employee.
  113. It is not in dispute that the claimant did not give a written notice of her intention to proceed on maternity leave and thus the respondents were unaware that indeed she commenced maternity leave on June 23, 2016 and testified that they were unaware that she was indeed on maternity leave on July 13, 2016.
  114. It is unclear why the claimant who was discharged from hospital on June 24, 2016 did not call the respondents to inform them of the fact that she had indeed delivered and had proceeded on maternity leave or do a written notice within a reasonable time thereafter in light of the occurrences on June 23, 2016.
  115. As stated earlier, the right of an employee to maternity leave with full pay is conditional upon a written notice to the employer.
  116. Section 31 (4) of the *Act* is categorical that;  

“ A female employee shall only be entitled to the rights mentioned in subsections (1), (2) and (3) if she gives . . . ”
  117. This subsection would appear to suggest that the employee’s written notice to the employer triggers the rights provided by section 31 of the Act. The words “shall only” literally means if and only if notice is given.
  118. Granted that the claimant did not give the requisite notice, she did not trigger her right to maternity leave with full pay and is thus not entitled to maternity leave pay.

The claim is unproven and is disallowed.

**(f) Unpaid Accrued Leave Days Kshs 140,000/=**

119. The claimant confirmed on cross-examination that particulars of leave had neither been pleaded nor testified about. It is unclear how many days the claimant is claiming and when they accrued. The claimant confirmed that she did not apply for leave at any point.
120. Puzzlingly, the witness on cross-examination confirmed that she was unaware of the number of days she was claiming.



121. Although leave is a statutory right, it is a species of special damages and must be specifically pleaded and proved. In the absence of the relevant particulars, the prayer for unpaid leave days is disallowed. (See *Osota Paul Osiemo v Inter Security Ltd* (*supra*).

**(g) Severance Pay (2 Years) Kshs 70,000/=**

122. The claimant adduced no evidence to establish entitlement to severance pay but more importantly, having found that the purported redundancy was unfair and was therefore an unfair and unlawful termination, the prayer for severance pay under section 40 (1) (g) of the *Employment Act* is unsustainable and is disallowed.

**(h) Service Pay**

123. RWI confirmed on cross-examination that the respondents did not make any NSSF contributions on behalf of the claimant as required by the provisions of the *National Social Security Fund Act, 2013*.

124. As a consequence, the claimant is awarded service pay for 2 years as ordained by the provisions of section 35(5) of the *Employment Act, 2007*.

**(i) Reimbursement Of All Unpaid Statutory Dues (NHIF, NSSF and KRA)**

125. As submitted by the respondents, the statutory dues in question namely, National Health Insurance Fund (NHIF), National Social Security Fund (NSSF) and Pay As You Earn (PAYE) are statutorily mandated and are payable to the relevant statutory body for a defined purpose and these bodies are body corporates with statutory power to enforce the provisions of the relevant Acts of parliament under which they are established.

126. In a nutshell and as held in *Mwende Mbiti v Citrus Inn Ltd* (*supra*), the unspecified statutory deductions are not recoverable by the claimant.

The prayer is dismissed.

**(j) Certificate of Service**

127. The claimant is entitled to a certificate of service as provided by section 51(1) of the *Employment Act*.

**(k) 12 Months Compensation For Unfair Termination Kshs 840,000/=**

128. Having found that the respondents terminated the claimant's employment unfairly, the claimant is entitled to the discretionary relief provided by section 49(1)(c) of the *Employment Act*.

129. In determining the level of compensation, the court has taken into consideration the following:

(i) The claimant was an employee of the respondent for a duration of one (1) year, ten (10) months and sixteen (16) days, a relatively short time and wished to continue.

(ii) The claimant had no record of misconduct or disciplinary issue. She had a clean record.

130. Although the claimant submitted that she was discriminated and terminated on the ground of pregnancy, no cogent evidence was led to establish actual discrimination based on the pregnancy or any other ground.

131. The claimant testified that she had by word of mouth informed the respondents that she would proceeding on maternity leave in July 2016. Although it is unclear as to when the verbal notice



was given and to whom, the claimant led no evidence that she was thereafter subjected any form of discriminatory treatment.

132. More pertinently, the claimant gave birth on June 23, 2016 which suggests that she was pregnant for last quarter of 2015 and the first half of 2016 but her employment was not terminated for almost the entire duration of pregnancy.

133. The court is not persuaded the claimant's termination was based on the fact of her pregnancy.

134. What is not in dispute however, is that the claimant's employment was terminated when she was on maternity leave, a fact she had not formally notified the respondents.

(iii) The claimant did not appeal the decision by the respondents or even respond to the redundancy notice in an endeavour to assuage the respondents to change their decision or accord her a softer landing.

135. In the circumstances, the court is satisfied that the equivalent of 3 months salary compensation is fair.

136. In conclusion, judgement is entered for the claimant against the respondent in the following terms:

- i. One month's salary in lieu of notice.
- ii. Unpaid housing allowance of 15% of basic pay from July 14, 2014.
- iii. Service pay for 2 years.
- iv. Equivalent of 3 months gross salary.
- v. Certificate of service to issue within 30 days of this judgment
- vi. Costs of this suit.
- vii. Interest at court rates from date of judgement till payment in full.

137. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27<sup>TH</sup> DAY OF JULY 2022.**

**DR JACOB GAKERI**

**JUDGE**

**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 March 15, 2020 and subsequent directions of April 21, 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 has 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.

**DR JACOB GAKERI**



**JUDGE**

