



REPUBLIC OF KENYA



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**Opondo v Kenya Power & Lighting Company Ltd (Petition 242 of 2019)
[2022] KEELRC 13557 (KLR) (15 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13557 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 242 OF 2019
BOM MANANI, J
DECEMBER 15, 2022**

BETWEEN

ESTHER OPONDO PETITIONER

AND

KENYA POWER & LIGHTING COMPANY LTD RESPONDENT

JUDGMENT

Introduction

1. This amended petition seeks to declare the respondent's decision to re-deploy the petitioner from the position of Principal Human Resource & Administration Officer to Principal Customer Service Officer as a violation of the petitioner's right to fair labour practice. Concomitant with this prayer, the petitioner also prays for several other reliefs to wit: compensation for violation of the right to fair labour practice; compensation for unfair termination; costs of the case; and interest on damages to be awarded.
2. The petition is resisted by the respondent on the grounds that the decision to re-deploy the petitioner did not infringe her rights as alleged. In the respondent's view, the decision was in the normal exercise of the employer's managerial prerogative to manage the workplace in the manner he deems best. Accordingly, the respondent asserts it was entitled to lawfully terminate the services of the petitioner when she failed to heed the directive to take up her new role in the company and report to her new station.

The Petitioner's Case

3. The petitioner averred that she was employed by the respondent in 1991. She averred that she rose through the ranks to the position of Principal Human Resource Officer. The petitioner contended that she served in this position until her termination on February 24, 2020.



4. According to the petitioner, on November 15, 2019, she received summons to appear in the office of her regional head. Upon visiting the said office, she was handed a letter which required her to take up a new position in the respondent institution. She had been re-designated from Human Resource and Administrative Function to the Customer Service Function.
5. The petitioner averred that the letter did not indicate the reason for the decision to re-designate her. Besides, since she was re-designated at job group MG07 and was going to report to an officer under job group MG08, the petitioner felt that the re-designation was in effect a demotion of rank.
6. It would appear that the petitioner initially resisted the move to re-designate her by appealing that she be transferred to Kisumu in the position of Principal Human Resource Officer. This is evident from her email dated November 18, 2019. She also moved to court on December 19, 2019 to try and stop the re-designation. From the court record, the court did not issue orders stopping the re-designation.
7. The petitioner cited witch-hunt as the reason for her re-designation. She blamed the decision to re-designate her to a blotched interview process that took place shortly before she was re-designated.
8. Through the interviews, the respondent was to hire new staff. The Petitioner appears to have been in charge of the process. She said that some of her workmates and Trade Union officials wrongfully accused her of using the interviews as an opportunity to tilt the recruitment process in favour of her community. The petitioner denied that she attempted to do this during the interviews.
9. As the court case progressed, the respondent invited the petitioner for its internal disciplinary process in which a decision was taken to terminate her. During the disciplinary session, it was alleged that despite her re-designation and transfer to Thika, the petitioner failed to take up her new job and report to her new work station. As a result, she was found to have disobeyed a lawful directive by the respondent.
10. The petitioner contended that she did not fail to report to work. From her evidence, she suggested that despite the challenges, she took up the new role as directed in the respondent's letter of November 14, 2019 but continued to work from the Kiambu office of the Respondent. Therefore, the decision to terminate her employment on grounds that she had failed to report to work was unfair.

Respondent's Case

11. The respondent contended that on November 14, 2019, it issued a notice to the petitioner re-designating her from her position of Human Resource & Administration Officer to its customer service office and requiring her to report to the Thika office. That this notice was delivered to the petitioner requiring her to take up her new position by November 18, 2019.
12. According to the respondent, the re-designation and transfer were done in the ordinary course of staff rationalization. That this process was sanctioned in the Human Resource Policy that governed the relationship between the parties. That besides, in the petitioner's letter of appointment dated August 12, 1991, the fact that the respondent reserved the right to transfer, re-designate and deploy the petitioner to any of its branches and or subsidiaries was clearly spelt out and the petitioner accepted this as a term of engagement between her and the respondent. That in furtherance of this policy, the respondent had severally re-designated, deployed and transferred the petitioner during the subsistence of the employer-employee relationship between the parties. That the re-designations, deployments and transfers were across various departments within the respondent institution.
13. The respondent averred that despite requiring the petitioner to take up her new position in the company and report to her new station at Thika by November 18, 2019, she did not do so. This



prompted the respondent to write to the petitioner on January 29, 2020 to demand an explanation why she had not reported to her new work station.

14. According to the respondent, the petitioner gave an explanation for her absence from her new station through her letter dated January 31, 2020. That the explanation was unsatisfactory prompting the respondent to institute disciplinary proceedings against the petitioner. The disciplinary session was held on February 14, 2020.
15. The respondent averred that the disciplinary panel was not satisfied with the petitioner's reasons for her absence from her new station. As a result, it recommended for the petitioner's termination from employment, a recommendation that the respondent implemented on February 24, 2020 by issuing the petitioner with a termination letter.

Issues For Determination

16. The parties elected to dispose of the petition through written submissions. Consequently, the affidavit evidence in support of and opposition to the petition together with the documents placed on record constitute the evidence upon which the petition shall be decided.
17. From the pleadings and submissions by the parties, the following are the issues for determination:-
 - a. Whether the re-designation of the petitioner was in violation of her right to fair labour practice.
 - b. Whether termination of the petitioner's employment was unfair and or unlawful.
 - c. Whether the parties are entitled to the reliefs sought in their pleadings.

Analysis

18. The letter appointing the petitioner into the workforce of the respondent granted the Respondent the power to transfer the petitioner to any of its branches or subsidiaries as and when need arose. This power was reiterated under part III of the respondent's Staff Regulations and Procedures. It is to be noted however that the two documents address bare transfer as opposed to re-designation of staff. The latter usually involves changing an employee's job description.
19. As a general practice, guidelines in the Human Resource Manual (HR Manual) of an institution do not have automatic application to the contracts of service of employees in the institution unless there is a clause in the contract incorporating the HR Manual into the contract (see *Heritage Insurance Company Limited v Christopher Onyango & 23 others* [2018] eKLR and *Mbarak Abdulqadir Abdalla v County Government of Lamu & County Public Service Board, Lamu County* [2022] eKLR). Where the HR Manual comes into existence after the contract has been entered into, the employer must draw the employee's attention to the Manual, usually in writing.
20. Although the contract between the disputants did not incorporate the Staff Regulations and Procedures Manual of the respondent, the petitioner did not deny that her attention had been drawn to its existence and that it applied to her contract. As a matter of fact, the petitioner relied on the said instrument in support of her submissions.
21. The powers granted to the respondent by the staff regulations and the contract of employment to cause staff transfers in the organization are consistent with the employer's managerial prerogative to manage the workplace in a manner that enhances performance and productivity (*Lucy Rimanto Molonket*



22. Courts are advised to exercise restraint not to issue orders that unnecessarily stifle the exercise of this prerogative. They must not be seen to issue orders that in effect oust the employer's legitimate power to manage the workplace.
23. As a rule of the thumb, courts should only intervene in the employer's decision-making process at the workplace when there is evidence of breach of the law or internal procedure by the employer or when the employer, in the name of exercising this mandate, has engaged in acts that are unconscionable and are in violation of or threaten to violate the employee's rights (see *Chrispus Ileri Kunuwa v County Government of Kitui & another* [2020] eKLR). And even then, the intervention must be only to the extent that the employer is required to remedy the offending action.
24. It is perhaps necessary to also point out that there is, in my view, a distinction between a bare lateral transfer and re-designation or re-deployment of employees. In a bare lateral transfer, the employee's job description does not change. On the other hand, a re-deployment or re-designation implies a change in the employee's job description.
25. According to George Ogembo in his book entitled, "Employment Law Guide for Employers, Revised Edition" redeployments are often (but not always) resorted to as a disciplinary measure against an employee. Where the employer re-deploys or re-designates an employee, it is generally desirable that the employee is consulted and his consent sought. Failure to do so results in an unfair labour practice.
26. The rationale for the above position becomes apparent when section 10(5) of the *Employment Act* (EA) is considered. The section provides as follows:-

"Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing."
27. The matters referred to in subsection one (1) of section ten (10) of the *Act* relate to *inter alia*: the hours of work; the job description of the employment; the employer's name; remuneration; and form and duration of the contract of employment among others. Whilst the employer enjoys the overall managerial prerogative to alter any of the aspects of employment aforesaid, the law requires that he does so in consultation with the affected employee.
28. With the constitutionalization of employment rights in Kenya, there is a sense in which what would otherwise pass for ordinary employment claims that were hitherto the exclusive domain of private law of contract now enjoy public law protection. As a result of this, constitutional law principles such as the right to: participate in decision making at the workplace; and be consulted and heard on matters that affect the interests of whichever social partner have permeated into the sphere of employment law.
29. As this transition takes shape, there has been considerable variance in opinion whether disputes arising from employment relations should be the subject of constitutional litigation. In *Benson Limo Long'olenyang & another v Principal Secretary, Ministry of Lands and Physical Planning & 2 others* [2021] eKLR for instance, the learned judge quoting the Court of Appeal decision in *James Mukuba Gichane v National Hospital Insurance Fund & 3 others* [2017] eKLR appears to suggest that disputes arising from employment relations are matters that fall outside the purview of constitutional law. They are to be resolved by reference to the contract of employment and employment law.
30. Yet, there is the divergent view that some of the workplace disputes can have a bearing on the constitutional rights of those involved and are amenable to resolution by invoking constitutional law



principles including the bill of rights. In this context, matters such as whether an employer can re-deploy or re-designate an employee without prior consultations with the employee have sometimes been considered as affecting rights of the employee to fair labour practice and fair administrative action (see *Republic v CEO, Youth Enterprise Development Fund & another Ex-Parte Entone Wasonga* [2018] eKLR and *Ken T Sungu v Kenya Ports Authority* [2020] eKLR).

31. This court is not in doubt that the obtaining constitutional dispensation envisages both the horizontal and vertical application of the Constitution. Article 2(1) of the Constitution declares that the Constitution binds all persons and State organs. It regulates both the public and private realms.
32. Notwithstanding the foregoing, the doctrine of constitutional avoidance requires that courts avoid invoking constitutional provisions to determine disputes if such disputes can be resolved by reference to ordinary legislation. Put differently, courts should be reluctant to provide constitutional remedies to redress disputes that can be settled through application of remedies that are available under statute law (see *KKB v SCM & 5 others* (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR)).
33. The reluctance by courts to provide constitutional clothing to every manner of dispute that arises between parties has been further exemplified in a plethora of decisions. In *Godfrey Paul Okutoyi (suing on his own behalf and on behalf of and representing and for the benefit of all past and present customers of banking institutions in Kenya) v Habil Olaka – Executive Director (Secretary) of the Kenya Bankers Association Being sued on behalf of Kenya Bankers Association) & another* [2018] eKLR, Mwita, J had this to say on the issue:-

"It is not every failure to act in accordance with a statutory provision or where an action is taken in breach of a statutory provision that should give rise to a constitutional petition. A party should only file a constitutional petition for redress of a breach of the Constitution or denial, violation or infringement of, or threat to a right or fundamental freedom. Any other claim should be filed in the appropriate forum and in the manner allowed by the applicable law and procedure."

34. Further, in *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] eKLR, the Court of Appeal expressed itself as follows on the issue:-

"The article 41 rights are enacted in the Employment Act and Labour Relations Act. The two Acts and the rules made there-under provide adequate remedy and orderly enforcement mechanisms. The 1st respondent filed a petition directly relying on the provisions of the Constitution for enforcement of contractual rights governed by the Employment Act without seeking a declaration of invalidity of the provisions of the Employment Act or alleging that the remedies provided therein are inadequate. The petition did not raise any question of the interpretation or application of the Constitution.

We adopt and uphold the general principle in the persuasive authority in *Barbara De Klerk (supra)* that where a legislation has been enacted to give effect to a constitutional right, it is not permissible for a litigant to found a cause of action directly on the Constitution without challenging the legislation in question."

35. At the very outset, it is important to point out that I find good sense in the views expressed above. The Constitution ought to be relied on to adjudicate disputes only when it is clear that constitutional questions have been raised for determination and that subsidiary legislation does not provide a suitable pathway to resolving the problem.



36. That the dispute before me stems from an employer-employee relationship which is governed by the ordinary law of contract is not in question. However, I understand the case to raise two distinct causes of action.
37. First, the petitioner questions legitimacy of the decision made on November 14, 2019 to re-deploy her from the Human Resource and Administrative function of the respondent to the Customer Service function. It is contended that this decision was in breach of the rules of natural justice and therefore in violation of the petitioner's right to fair labour practice protected under article 41 of the Constitution.
38. Second, the petitioner questions the decision by the respondent to terminate her contract of employment on February 24, 2020 for alleged failure to report at her new workstation. The petitioner contends that contrary to the position taken by the respondent, she had reported to her workstation only that she had been allowed by her immediate supervisor to work from the respondent's Kiambu as opposed to the Thika office.
39. I have considered the two causes of action in the context of the theory of constitutional avoidance discussed above. I have asked myself whether the issues arising from the two causes of action can be resolved without the need to resort to a constitutional remedy. I have also asked myself whether the two causes of action raise a constitutional question for determination by the court.
40. In respect of the first question, I am satisfied that it raises a constitutional question that will require reference to the bill of rights. Further I am satisfied that the remedy provided for under the EA may not be suitable for the breach alluded to in the first cause of action.
41. I understand the petitioner as stating that her re-designation violated the principles of natural justice. These principles, in the context of this dispute, revolve around the right of the petitioner to be heard on the question of her re-designation. In effect, the Petitioner is asserting that the decision to re-designate her was taken without her input in violation of her right to be heard and therefore her right to fair labour practice under article 41 of the Constitution. Indeed, that this is the position she expresses is self evident from her assertion that she was not given reasons for the re-designation.
42. As I mentioned in the earlier parts of the judgment, a re-designation or re-deployment implies change in the employee's job description. Under section 10(5) of the EA, such decision requires the employee's input.
43. I have no doubt in my mind that the re-deployment of the petitioner was subject to the requirements of section 10(5) of the EA. This fact can be inferred from the respondent's letter of November 14, 2019. From the letter it is indicated that the petitioner was to report to her new station and supervisor for "assignment of duties." And as the petitioner states in her letter dated January 31, 2020, upon reporting to the new station, she was assigned new duties of debt collection in the customer service department which she says was "a totally new environment" for her. As a result, the petitioner says that she had to request her supervisor to be allowed to work from the Kiambu office in order to get the opportunity to learn about the roles in the new department.
44. In effect, what the petitioner raises is whether the failure to hear her out as required under the rules of natural justice violated her constitutional right to fair labour practice as protected under article 41 of the Constitution. This question requires interrogation of the Constitution against the facts presented by the petitioner.
45. Further, a scrutiny of the petition demonstrates that the petitioner has cited the specific provisions of the Constitution that she alleges were contravened by the respondent. She then goes ahead to give



particulars of the alleged contraventions. This is in line with the guidelines in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR.

46. The other issue is whether the *Employment Act* provides a suitable remedy for the injury that may arise from the cause of action relating to the alleged unlawful re-deployment of the petitioner. The petitioner argues that the re-deployment constituted unfair labour practice against article 41 of the *Constitution*. As mentioned above, this violation is in effect a violation of section 10(5) of the *EA*. Section 49 of the said *EA* which is the primary guide on the remedies to be granted under the Act does not provide a specific remedy for alleged breaches of section 10(5) of the *EA*. It prescribes remedies for wrongful dismissal and unfair termination only. In terms of the decision in *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] eKLR, a party is permitted to resort to a constitutional remedy if the subsidiary statute under which he has sued does not provide an adequate remedy to redress his grievance.
47. On the other hand, the issues arising from the second cause of action are resolvable by reference to the principles of the law of contract, which is the foundation of employment law. It is in this context that I will examine the three issues in the petition.
48. The first issue for determination relates to whether the re-deployment of the petitioner was illegitimate and therefore in contravention of the right to fair labour practice. I will answer this question by examining the evidence on record in the context of the doctrine of the employer's managerial prerogative over the workplace and the law as it currently is.
49. As mentioned in the preceding sections of this decision, the disputants entered into a contract of employment dated August 12, 1991. Under clause one (1) of the contract, the petitioner agreed to serve in any of the respondent's branches and subsidiaries. There was no limitation placed on the respondent's right to exercise the power to transfer the petitioner.
50. The transfer clause in the contract is replicated in part III of the respondent's Staff Regulations and Procedures. The regulations granted the respondent the "leeway to deploy its human resource where they can be optimally utilized." It is on the basis of these two instruments as read with the applicable law that the parties to this dispute were to conduct their affairs.
51. The fact that the respondent's Staff Regulations and Procedures provided the respondent with these wide powers to transfer and perhaps re-deploy and re-designate staff does not in my view mean that the powers were exercisable in total disregard of the applicable law. Consequently, where a re-deployment or re-designation had the effect of altering an employee's job description, it is my view and I hold that the respondent was obliged to process the said re-designation in consultation with the employee in terms of section 10(5) of the EA. If this was not done, the resultant re-designation would be unlawful (see *Ali v National Health Insurance Fund & 2 others; Transparency International & 2 others (Interested Parties)* (Cause E714 of 2022) [2022] KEELRC 13443 (KLR)).
52. From the record, there is evidence that between 1991 and 2019, the respondent transferred, deployed and re-designated the petitioner between two departments: Human Resource (HR) and Information Communications Technology (ICT). The petitioner spent most of her years of work in the two departments.
53. As the record shows, on November 8, 2018, the respondent applied to be re-designated from the ICT department back to HR department as her performance review showed that she had underperformed in the former department. There is evidence that shortly after this request, the respondent, by its letter dated February 21, 2019, re-designated the petitioner to the HR department. The petitioner has also



- filed evidence of her registration with the Institute of Human Resource Management as a member of the Association.
54. This evidence shows that the petitioner's expertise was in human resource. The letter dated November 14, 2019 required her to take up a new role as a customer service officer. In her own words, the petitioner stated that the new assignment drove her into an entirely new world where she required fresh training to cope. This would come at great inconvenience and strain to the petitioner. In previous decisions, this court has nullified re-designations whose effects are adverse to staff if such re-designations have been made without regard for the professional development of the affected staff and without their input (see *Republic v CEO, Youth Enterprise Development Fund & another Ex-Parte Entone Wasonga [2018] eKLR and Ken T Sungu v Kenya Ports Authority [2020] eKLR*).
 55. It is not disputed that prior to her re-designation to this department, the petitioner was not consulted. As she says, no reasons were given to justify the decision to remove her from her well trodden career path into a new area. The respondent did not find it necessary to demonstrate the extra ordinary circumstances that necessitated this drastic move.
 56. That the change affected the petitioner's job description has not been denied by the respondent. This action was clearly unfair in so far as it did not comply with the requirements of section 10(5) of the EA. Further, in so far as there were no consultations with the petitioner as required under section 10(5) of the EA, the decision infringed on the natural right of the petitioner to due process in the employment relationship with the respondent. It was therefore an unfair labour practice.
 57. The other issue for determination is whether termination of the petitioner's employment on February 24, 2020 was unfair and or unlawful. The answer to this question depends on two elements: whether there was valid reason to terminate the petitioner in terms of section 43 of the EA; and whether the respondent observed due process in terminating the respondent in terms of sections 41, 43 and 45 of the EA.
 58. I will start by evaluating the first of the two elements. The letter of deployment dated November 14, 2019 required the petitioner to report to its Thika office in Kiambu County. She was to report by November 18, 2019.
 59. In the course of January 2020, the respondent indicated that it realized that the petitioner had not reported to her new station in contravention of the directions in the aforesaid letter. Consequently, the respondent wrote to the petitioner on January 29, 2020 to explain why she had failed to report to her new station of work. This letter is on the court record.
 60. On January 31, 2020, the petitioner wrote to the respondent in response to the respondent's letter aforesaid. In the letter, the petitioner asserted that despite the challenges posed by her inexperience in the customer service docket she had reported to the new station and taken up her new role. She averred that she had requested and been allowed by her immediate supervisor to work from the Kiambu office. The petitioner even gave an account of her output during the period.
 61. When asked about proof of her reporting to work, the petitioner said that the Kiambu office did not have a CCTV surveillance system. And neither did it have a system to monitor the reporting and departure of staff.
 62. It is noteworthy however that on the letter dated January 31, 2020 by the petitioner to the respondent explaining that she had been permitted by her immediate supervisor to work from the Kiambu office, there are hand-written comments on the top right hand side. The comments read as follows:-

"See email attached and my earlier comments below. Give benefit of doubt."



She had requested to be placed somewhere else within Kiambu County other than Thika awaiting a matter she filed in court (email attached), which I accepted. She now works from Kiambu Branch. The HRO's office can advise further if there is need for her to start reporting to Thika despite raising issues touching on her personal security."

63. These hand written notes are signed off on February 2, 2020 and February 7, 2020. Undoubtedly, they are internal comments by an officer of the respondent. The comments corroborate the petitioner's assertion that she indeed was working from the Kiambu office with the permission of part of the management of the respondent.
64. In the termination letter dated February 24, 2020, the respondent cited failure to report to her authorized workstation as the sole ground for terminating the petitioner. The minutes of the disciplinary session held on February 14, 2020 also indicate failure to report to her workstation after redeployment as the only charge that the petitioner faced before the disciplinary panel.
65. In her response to the charge, the petitioner stated as follows:-
- "So I was transferred and not given a reason though from the grapevine I hear it was the interview that Maina complained that I brought many Luos in a Mbukinya bus. From records, there were more Kikuyus than any other tribe interviewed. This issue brought a lot of hostility. When I was advised to report to CBM Kiambu, I reported and discussed with the CBM and requested that I be at Kiambu for the reason, I felt insecure at Thika. The CBM said that he had also heard of the allegations. He allowed that I sit in Kiambu since even much of our work was in Kiambu."
66. From the extract, it is clear to me that the petitioner gave the same explanation for working from the Kiambu office that she had given in her letter dated January 31, 2020 in response to the show cause. It is noteworthy that the disciplinary committee sat on 1February 4, 2020, several days after the respondent's staff had made the handwritten notes on the petitioner's letter of January 31, 2020 indicating that indeed the petitioner had requested and been allowed to work from the Kiambu office.
67. The letter of termination of the petitioner dated February 24, 2020 provides the ground for her termination as follows:-
- "Failure to report to your work station by November 18, 2019 as instructed in the redeployment letter dated November 14, 2019."
68. Clearly, the import of the letter of termination is that the disciplinary panel failed to take into account the fact that both the petitioner and the respondent's officers had confirmed that the petitioner had been authorized by part of the respondent's management to work from the Kiambu office as per the hand written notes on the petitioner's letter of January 31, 2020 which are authenticated by signing. It is noteworthy that this letter with the handwritten notes was produced in evidence by the respondent. It is therefore not possible to suggest that the handwritten comments on the said letter are a fabrication.
69. The fact that the disciplinary panel found that the petitioner had failed to report to her authorized workstation notwithstanding the internal comments by the respondent's staff that the petitioner was indeed working from the Kiambu office and that she was doing this with the knowledge and permission of her superiors is startling. It suggests a pre-determined effort to terminate the petitioner irrespective of the invalidity of the ground for termination. There was clearly no genuine reason to terminate the petitioner. The decision by the respondent to relieve the petitioner of her employment was, in the circumstances, not guided by the principles of equity and justice as dictated by section 45 of the [EA](#).



70. Having arrived at the conclusion that the petitioner's termination was premised on an invalid ground, it follows that the respondent has failed to demonstrate that it had a valid reason to terminate the petitioner's contract of employment in terms of section 43 of the EA. This being the case, it became unnecessary to examine the other limb relating to whether the respondent observed due process in the proceedings of February 14, 2020 leading to the petitioner's termination. This is so because whatever finding on this latter ground will not cure the fact that the respondent had no substantive ground to terminate the petitioner's contract of employment. I therefore declare the decision on February 24, 2020 to terminate the petitioner's contract of employment unfair and unlawful for want of compliance with sections 41, 43 and 45 of the EA.

Disposition

71. Having reached the conclusion that the re-designation of the petitioner that happened on November 14, 2019 was illegitimate and in violation of the petitioner's right to fair labour practice, I find that the petitioner is entitled to prayers a) and d) in the amended petition.

72. For the avoidance of doubt:-

- a. A declaration is hereby issued that the respondent's re-designation of the petitioner on November 14, 2019 was illegitimate and therefore in violation of the petitioner's right to fair labour practice under article 41 of the Constitution.
- b. The petitioner is awarded damages of Kshs 500,000/- as compensation for infringement of her right to fair labour practice.

73. As the decision to terminate the petitioner's contract of service vide the respondent's letter of February 24, 2020 was premised on an invalid ground, the petitioner is entitled to compensation for unlawful termination. Taking into account the length of the petitioner's service and the fact that the petitioner's conduct did not contribute to her termination, I award her compensation equivalent to her gross salary for six (6) months totaling Kshs 1,423,480/. In determining the petitioner's monthly salary, I have relied on the respondent's statement on the petitioner's salary in the letter of termination dated February 24, 2020.

74. The petitioner is awarded interest on the sums above at court rates from the date of judgment till payment in full.

75. The petitioner shall also have costs of the petition.

76. The award under paragraph 73 is subject to the applicable statutory deductions under section 49 of the EA.

DATED, SIGNED AND DELIVERED ON THE 15TH DAY OF DECEMBER 2022

BOM MANANI

JUDGE

In the presence of:

.....for the petitioner.

..... for the respondent.

ORDER



In light of the directions issued on July 12, 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

BOM MANANI

