



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR COURT OF KENYA

AT NAIROBI

ELRC CAUSE NO. 1861 OF 2017

RUTH WAIRAGU.....CLAIMANT

-VERSUS-

ELITE TRAVEL SERVICES LIMITED (HRG KENYA).....RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

JUDGMENT

I. INTRODUCTION

1. In a Memorandum of Claim dated 15th September, 2017 and filed in court on 19th September, 2017 the Claimant prays for the following against the Respondent: -

(a) A declaration that Claimant's termination from the Respondent's employment was unprocedural, unfair, unlawful, unconstitutional and amounted to wrongful dismissal.

(b) A permanent injunction be issued restraining and stopping the Respondent from headhunting, advertising, recruiting or redeploying a new Bid-Writer and Implementation Manager based on redundancy notice that terminated the Claimant on 20th July, 2017.

(c) An order be issued revoking or annulling the termination letter dated 20th July, 2017 and reinstating the Claimant as the Bid Writer and Implementation Manager forthwith without loss of any salary and benefits thereof.

(d) In the alternative to (b) and (c) above, the Claimant prays for remedies for wrongful dismissal and unfair termination as follows: -

a. unpaid leave days Kshs. 52,883.36

b. Severance pay Kshs.793,250.50

c. Payment *in lieu* of notice Kshs.679,929.00

d. Compensation for unfair termination Kshs.2,719,716.60

e. Salary for days worked

in July 2017 Kshs.151,095.00

f. House allowance

g. Exemplary Damages

h. Damages for Constitutional violations

i A certificate of service

j. Interest on (a) to (f) above from the date of termination to the date of payment in full.

e. Costs of this suit

f. Any other relief that the court may deem appropriate to grant.

2. Together with the Memorandum of Claim the Claimant filed a Verifying Affidavit, list of witnesses, Claimant's written statement, and a list of documents with a bundle of documents attached thereto.

3. On 5th December, 2018 another witness statement was filed by the Claimant for one REETA DOGRA.

4. Upon service of the Claimant's pleadings, the Respondent entered appearance on 22nd September, 2017 and filed a Memorandum of reply on 29th September, 2017. The Respondent prays that Claimant's cause be dismissed with costs for lack of merits.

5. The Claimant also filed a Notice of Motion dated 15th September, 2017 seeking reinstatement to the position that she held before termination and orders restraining the Respondent from advertising and filling the position of Bid-Writer and Implementation Manager but the Claimant abandoned the application on 18th January, 2018.

6. Subsequently, the matter was certified ripe for hearing and the same came up for hearing before this court on 4th and 9th August, 2021 when both parties tendered their evidence; written submissions were thereafter filed and matter reserved for judgment.

II. CLAIMANT'S CASE

7. In brief, the Claimant's case is that she was first engaged by the Respondent as a Senior Marketing Executive vide a contract dated 21st January, 2010 to commence work on 1st March, 2010 at a monthly salary of Kshs.90,000/=. The Claimant states that by March, 2016 she had climbed the ladder to hold the position of Bid-Writer and Implementation Manager, which position she alleges that she held until her termination on 20th July, 2017 through redundancy.

8. The Claimant alleges that as at the time of her termination she was earning a salary of Kshs.226,643/= wherein a sum of Kshs.123,863/= was paid in cash and Kshs.102,780/= paid through her bank account.

9. The Claimant alleges that her termination on account of alleged redundancy was dismissal in disguise due to her strained relationship with the Managing Director of the Respondent.

10. It is on the basis of the foregoing that the Claimant has filed this cause seeking the prayers set out above. During the hearing the Claimant testified in the support of her case and called one witness.

III. RESPONDENT'S POSITION

11. On the other hand, the Respondent filed pleadings as afore-stated and denied the Claimant's allegations and prayed that the claim be dismissed with costs.

12. The Claimant called four witnesses in support of their position and has put the Claimant to strict proof of all the allegations made in the Memorandum of Claim.

IV. ISSUES FOR DETERMINATION

13. From the pleadings filed by both parties, the oral and documentary evidence adduced, including the written submissions filed, the following issues manifest for determination: -

(i) What was the salary of the Claimant as at the time of termination?

(ii) Was the termination of the Claimant by the Respondent on account of redundancy lawful, both in substance and procedure?

(iii) If the termination was unlawful, what remedies is the Claimant entitled to and in what *quantum*?

(iv) Who meets the costs.

V. CLAIMANT'S SALARY

14. Paragraph 15 of the Memorandum of Claim states: -

“At the time she was being terminated her monthly net salary was Kshs.226,643 part of which Kshs.123,863 would be paid in cash and the balance Kshs.102,780 paid through the bank.”

15. In paragraph 27 of Respondent's Memorandum of Reply in response to the above, the Respondent pleads: -

“The contents of Paragraph 15 of the Memorandum of Claimant are vehemently denied and the Claimant is put to strict proof thereof. The Respondent further reiterates that the Claimant was always paid the salary that is clearly evident in her payslip.”

14. The payslips that the Respondent is referring to are annexed to the reply and were produced in court as exhibits. The payslips cover the period from January, 2015 to February, 2017. In all the payslips the basic pay is indicated as Kshs.120,480/= and the gross pay as Kshs.150,600/=. For the month of July, 2017 wherein the Claimant worked for 20 days, the basic salary is indicated as Kshs.80,320/= and the gross pay as Kshs.100,400/=. It seems that the Claimant did not attract any salary increment for the period relating to the said payslips.

17. The Claimant alleged in her testimony that some other money, beyond what is stated in the payslips, was paid in cash in an “envelope.” However, no evidence was adduced in support of this serious allegation. CW2 who was called as a witness by Claimant, and who also worked for the Respondent, did not testify in support of that allegation to the effect that some part of the salaries was paid in cash or in an “envelope” and in any event the only written document where an envelope is mentioned is an email sent out in September 2011 by one Remmi Sirajudeen, acting accountant, informing Remmi Siraj to “pick your envelope please.”

18. This court finds that there is no evidence to counter and or contradict the written evidence adduced by the Respondent via the payslips. As submitted by the Respondent, this is a serious allegation that imputes tax evasion or financial impropriety on the part of the Respondent and the Claimant ought to have had good grounds and evidence in support of the allegation and which the court finds she failed to do.

19. Based on Section 97 of the Evidence Act (Cap 80) this court finds and holds that as at the time of termination the Claimant's gross monthly salary was Kshs.150,600/= as per the payslips.

VI. TERMINATION

20. The Claimant alleges that her termination was dismissal disguised as termination on redundancy. The Respondent alleges that upon due consideration of their business standing and profitability they found the position held by the Claimant unresponsive and unproductive and as such the Respondent decided to declare the holder of the position redundant. The Respondent through RW1 alleged that the redundancy was not aimed at the Claimant as a person but the function of that position, which the Respondent found financially untenable. This court has now to consider the entire circumstances of the redundancy and determine whether the same was lawful both in substance and procedure.

21. The importance of both substantial and procedural fairness in all forms of termination has been emphasized by this court in a variety of decisions including **Mary Chemweno -V- Kenya Pipeline Company Limited (2014) eKLR; Walter Ogal Amiro -V- Teachers Service Commission (2013) e KLR; and Janet Nyandiko V- Kenya Commercial Bank Limited (2017) eKLR.**

22. Courts have also made decisions specifically on fairness in redundancy in a variety of decisions including **Kenya Airways -V- Aviation and Allied Workers Union and 3 Others (2014) eKLR; Geoffrey Adabwa Ashino V- Coconut (K) LTD (2019) eKLR; and Paul Ng'eno -V- Pyrethrum Board of Kenya (2013) eKLR.**

23. Section 2 of the Employment Act No. 11 of 2007 (the Act) defines redundancy as: -

“the loss of employment, occupation, job or career by involuntary means through no fault 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.”

24. Essentially, the Act allows an employer to terminate an employee. However, the said right on the part of the employer is regulated by Sections **40, 43** and **45** of the Act. Section 40 specifically places obligations and conditions that an employer should meet before declaring an employee(s) redundant. What are those conditions?

(i) An employer, where an employee(s) is a member of a Trade Union, shall issue at least one month's prior notice of the **intended** redundancy to the union and the area labour officer.

(ii) Where the employee(s) is not a member of a union, the notice shall issue to the employee(s) and the labour officer.

(iii) In arriving at the decision on the employee(s) to be affected by the redundancy the employer has to consider seniority in time and skill, ability and reliability especially of the employee(s) to be affected.

(iv) An employer must ensure that even an employee(s) who is not a member of a trade union does not lose benefits under any subsisting collective bargaining agreement.

(v) Any pending leave shall be paid for in cash before the employee is let to go on redundancy.

(vi) The employer shall pay the employee(s) affected severance pay at the rate of not less than 15 days for each completed year of service.

25. The above provisions clearly demonstrate that redundancy is a process and not an event. Further, even where an employee(s) is to be terminated on redundancy such an employee(s) should still be afforded a hearing on whatever it is that they would wish to say about the termination on redundancy.

26. Further, it is this court's view that even where termination is on redundancy the provisions of **Sections 43** of the Act, on proof of reason for termination by the employer, and **45**, on unfair termination, apply and especially the procedural fairness.

27. This court shall now proceed to apply the principles and procedures enumerated above to the facts and evidence in this case.

VII. SUBSTANTIVE FAIRNESS

28. The Respondent is categorical that they decided to declare the position of Bid Writer redundant for the reason that the Claimant, who was by then holding that position, was not performing. RW1 testified that they tried to move the Claimant from one position to the next without success as the Claimant allegedly continued to perform dismally. On cross-examination, RW1 admitted that most of the business for the Respondent is obtained through bidding and that upon termination of the Claimant the function of bid writing and procurement of tenders, which were core duties of the Claimant, were to be undertaken by the Managing Director assisted by other employees.

29. From the foregoing, it is clear that it is not the function of the Bid Writer that was the issue but the holder of that portfolio, the Claimant, who according to the Respondent was not performing. However, RW1 and the other witnesses for the Respondent did not inform the court what measures were put in place by the Respondent to improve performance and productivity of the Claimant. For example, was the Claimant sent out on training either internally or externally? Was the Claimant placed under a Performance Improvement Plan (PIP), or were any other steps taken? No evidence was availed by the Respondent to shed light on this issue.

30. Negligence, carelessness, and improper and poor execution of duties is a ground for termination or dismissal under Section 44(4)(c) of the Act. The Respondent had this option against the Claimant but only after taking due and necessary steps in improving the Claimant's skills to execute her duties for satisfactory performance and productivity. All the witnesses for the Respondent cited non-performance as the reason why the Claimant was terminated.

31. However, this court has considered the necessary steps and the procedure that should be followed in terminating an employee on the ground of non-performance. See holdings in **Banking Insurance and Finance Union (Kenya) –V- Barclays Bank of Kenya Limited and Another (2016) eKLR** and **Sosphita Abdalla Kisanga -V- Intex Construction Company Limited (2018) eKLR**.

32. It would appear, and this court finds so, that instead of the Respondent taking appropriate steps to improve the alleged poor performance, they decided to terminate the Claimant on alleged redundancy. There is no evidence adduced on the part of the Respondent of any steps that were taken to improve the alleged poor performance and low productivity by the Claimant.

33. RW1 informed the court in her testimony that the function of bid writing and procurement through bidding did not die with termination of the Claimant as that is the main process through which the Respondent obtains business. This state of Affairs is what led the Claimant to pleading and testifying that her termination was a dismissal disguised as redundancy. This allegation by the Claimant is further supported by the evidently hostile relationship between her and RW1, the Managing Director of the Respondent, building up to the Claimant's termination on alleged redundancy.

34. The Respondent alleges that the termination of Claimant on redundancy was informed by operational and commercial considerations and that the position had become a financial burden and liability. However, no evidence was availed to demonstrate how the position had become a liability or a financial burden to the Respondent especially considering that the core function of that position remains to this day. It was incumbent upon the Respondent to demonstrate through reliable and admissible evidence how the position had affected its operational costs and how abolishing that position was to improve the Respondent's financial position and standing through a positive impact of such abolition and termination of the Claimant on redundancy.

35. On the issue of substantive fairness, this court returns that the Respondent has failed to discharge the burden placed on them under Section 43 of the Act. The Respondent has failed to demonstrate that there were genuine reasons that existed at the material time to warrant termination of the Claimant on redundancy. The Respondent has failed to prove the reason(s) for termination and hence this court finds that the said termination was unfair in substance.

VIII. PROCEDURAL FAIRNESS

36. In an earlier part of this judgment this court has analyzed the provisions of Section 40 of the Act on the steps that an employer should take before, during, and after terminating an employee on account of redundancy. It is now time to apply those requirements to the facts and evidence of this cause.

37. There is no evidence that the Claimant was a member of a trade union. Therefore, the Respondent was legally bound to issue a notice of the intended redundancy to the Claimant and the area labour officer at least one month prior to the date of declaration of redundancy. In fact, this first notice is supposed to be issued to all employees, whether affected or not, to alert them of the impending redundancy. The labour officer is informed for the public good and for the economic impact that redundancy might have and for purposes of the role of Government

in regulating labour and employment and its impact on economic development.

38. There is no evidence that such a notice as envisaged above was issued to the Claimant, the other employees, and the labour officer in charge of the area. On this account alone, the Respondent failed to comply with the law.

39. The other notice that the Respondent ought to have issued is for one month to the Claimant informing her of the decision taken by the Respondent to terminate her on redundancy. Even where the employer intends to pay in *lieu* of the notice, the notice must be issued, see the holding in **Mary Nyawira Karimi -V- Pure Circle (K) Limited (2018) eKLR**.

40. The Claimant testified that no notice was issued to her prior to the termination letter dated 20th July 2017, which was served on the same date, the date of termination. The Respondent has not availed any notice issued and served upon Claimant prior to termination. This court finds and holds that no notice was issued and served on the Claimant or the other employees notifying and informing them of the intended redundancy. The court further finds and holds that even after the Respondent took the decision to terminate the Claimant on alleged redundancy no notice of termination was issued and served upon the Claimant.

41. The Claimant testified that she was summoned by RW1 to a meeting on 20th July, 2017 and in attendance were other members of senior management of the Respondent. That during that meeting she was handed the termination letter dated 20th July, 2017 without being given an opportunity to make any contribution or even comment. The Respondent did not produce minutes of what transpired during that meeting and as such the evidence from the Claimant stands unchallenged.

42. The Respondent produced exhibit 27 as the notice that was issued to the area labour officer. The said notice is dated 20th July, 2017 and date-stamped as received on the same date by the County Labour Office Nairobi. This is the same date when the Claimant was terminated and served with the termination notice dated the same date. Certainly, this is not what Section 40(1)(b) of the Act directs the Respondent to do. The notice to the labour officer and to the employee must be issued at least one month in advance and that of termination should be issued to the employee (Claimant) one month in advance of termination date even where the employer intends to pay for the notice period.

43. The Respondent also failed to tender evidence on how the decision to declare the Claimant redundant was arrived at and whether the Respondent considered the seniority, skill, ability, and reliability of the Claimant. The Claimant had worked for the Respondent for over seven years and surely the Respondent could not have retained the Claimant for that long if she was not adding value. It is also noted that the Respondent has not to this day paid the claimant her terminal dues on allegation that the Claimant has refused to execute a discharge voucher. To demonstrate good faith the Respondent ought to have paid the money into the account of Claimant, as the Respondent had details thereof and then object genuinely on any other claims that the Claimant may press including those claimed in this cause. That way the Respondent would have demonstrated good faith especially on items that may not have been contested without demanding that the Claimant executes a discharge voucher which the Claimant alleges would have taken away her rights to follow other claims that she felt she is entitled to. Be that as it may, the Respondent completely failed to comply with the express provisions of Section 40 of the Act in regard to the procedure to be adopted in terminating the Claimant on account of redundancy.

44. This court returns that on the issue of substantive fairness the Respondent failed to apply the law as laid down in **Section 40 of the Act** hence the termination was unlawful under Section 45 of the Act both in substance and procedure.

IX RELIEFS/REMEDIES

45. Having found that the termination of the Claimant by the Respondent on account of redundancy was unfair and unlawful both in substance and procedure, this court now proceeds to consider the relief/remedies and the *quantum* thereof.

46. The remedies/reliefs that the Claimant is seeking are set out in the first page of this judgment as per the Memorandum of Claim. The remedies that this court can grant for unfair termination or wrongful dismissal are set out in Section 49 of the Act and further affirmed in Section 12(2) of the Employment and Labour Relations Court Act No. 20 of 2011. The court shall now look into each of the reliefs/remedies sought in the Memorandum of Claim as herein under.

47. On prayer (a), it has been deliberated in the foregoing paragraphs on the legality of the termination of the Claimant by the Respondent on account of redundancy. The court has found that the said termination was unfair and unlawful for want of substance and procedure adopted by the Respondent. The court has no difficulties in finding in favour of the Claimant in prayer (a) and declaring that Claimant's termination from the Respondent's employment was unprocedural, unfair, and unlawful both in substance and procedure.

48. In respect of prayers (b) and (c) the court finds that in view of passage of time and even practicability of the Claimant taking up a job with the Respondent, whether in the same position or a comparative position, it would not be fair to order reinstatement or re-engagement of the Claimant by the Respondent, and in any event, the relationship between the Claimant and the Respondent, and especially with the Managing Director (RW1), had deteriorated so much as at the time of termination that it would not be logical and or reasonable to expect peaceful, civil, and productive engagement at that workplace. Further, as noted by counsel for the Respondent in their written submissions, the Claimant appears to have abandoned the prayer for reinstatement. This court agrees with the Respondent that indeed there is no submission from the Claimant's counsel on this issue.

49. Consequently, it would not make any logical sense to prohibit the Respondent from advertising and filling the position of Bid-Writer at this stage. The Respondent through RW1, the Managing Director, indicated that the position had been abolished. This court cannot issue orders in vain and as such, for the reasons stated above, prayers (b) and (c) are denied.

50. Probably apprehensive of the likelihood of prayers (b) and (c) not succeeding, the Claimant put forward reliefs/remedies in prayer (d) of the Memorandum of Claim. This court shall now consider each of the items in prayer (d).

(a) Unpaid leave days

51. The Claimant prays for Kshs.52,883.36 under this sub-head. No evidence was adduced on how this figure is arrived at. No records were produced or any other evidence in support of this claim. However, in the Discharge Voucher produced as exhibit 32 the Respondent admits a sum of Kshs.35,140/= and that admission by the Respondent is again reiterated in their written submissions. This court awards the admitted sum of Kshs.35,140/= under his sub-head.

(b) Severance Pay

52. The Claimant worked for the Respondent for the period from 1st March, 2010 to 20th July, 2017 for a total of (7) years and about four (4) months. Severance pay is to be paid at the rate of not less than 15 days for each completed year of service as per Section 40(1)(g) of the Act. The court has already found that the verifiable salary, as at the time of termination, is Kshs.150,600/=. The severance pay is thus calculated as hereunder: -

$$\text{Kshs.150,600} \times 15 \times 7 = \text{Kshs.527,100/=}$$

30

(c) Payment in Lieu of Notice

53. The court has found that the Respondent did not issue the Claimant with one (1) months' notice on termination. In *lieu* thereof, the Respondent is bound in law to pay one month's salary or such other longer period as may be contained in the contract of service. The contract between the parties at Clause 22.0 provides for this position which is in consonance with Section 40 (1)(f) of the Act. The court allows this claim as hereunder: -

$$\text{Kshs.150,600} \times 1 = \text{Kshs.150,600/=}$$

(d) Gratuity

54. Gratuity is ordinarily a gratuitous and voluntary pay to an employee who has been terminated unless the same is provided for under the contract of service between the employee and the employer. This position has been enunciated by the Court of Appeal in **Pathfinder International Kenya Limited V Stephen Ndegwa Mwangi (2019) eKLR; Bamburi Cement LTD V Farid Aboud Mohammed (2016) eKLR; and H. Young & Company EA Limited V Javan Were Mbago (2016) eKLR**, among other decisions.

55. The contract of service between the parties in this instant case does not contain a clause on gratuity and as such no gratuity would be due to the Claimant.

56. In the discharge voucher produced as an exhibit in this cause, the Respondent had undertaken to pay gratuity in the sum of Kshs.639,959/=. However, this voucher was not executed by both parties and hence it is not a binding contract between them. The cheque that was to settle the tabulated dues, which is at Page 66 of bundle of documents from the Respondent, although including the gratuity element was not released to the Claimant and as such it is again not enforceable as against the Respondent. This claim on gratuity is hence denied for the reasons above.

(e) Salary for July, 2017

57. It is not disputed that the Claimant worked for 20 days in the month of July, 2017. The Respondent has produced as an exhibit a payslip for the month of July, 2017 at page 34 of their bundle of documents. In that payslip the net pay for that month for the claimant is indicated as Kshs.75,116. This court's understanding is that salary in July, 2017 was not paid into the bank account of the Claimant because as at the time of preparation of the same the Claimant had already been terminated. However, the correct calculation of the salary for July, 2017 should be as hereunder: -

$$\text{Kshs.150,600/30} \times 20 = \text{Kshs.100,400/=}$$

58. That is the same figure admitted by the Respondent in their written submissions and the same is awarded to the Claimant.

(f) House allowance

59. There is no evidence adduced by the Claimant on this item and nothing has been said on the same in Claimant's written submissions. This court notes that in all the payslips produced as exhibits by the Respondent the element of house allowance has been factored in at a monthly rate of Kshs.30,120/=. In the circumstances this claim is misplaced and the same is denied.

(g) Exemplary damages

60. The essence of exemplary damages is to punish a party beyond any compensatory damages that such a party may have been ordered to pay to the innocent party. While the treatment that the Claimant received from the Respondent was not cordial especially after giving her

services for seven years, the court finds that the Claimant is well compensated in the other heads as awarded herein and that the economic realities obtaining, especially due to Covid -19, which has hit hard the industry that the Respondent operates, an award of further compensation may cripple the Respondent financially and probably lead to the unintended consequence of the Respondent winding up their business leading to even further job losses and economic hardship to the would be affected persons and their families. Although no evidence has been adduced in support of the plea made by RW1, the Managing Director of the Respondent, this court takes judicial notice of the fact of the reality that travel and hospitality industry has been hard hit by the pandemic that is Covid 19.

61. On the basis of the holding in **Godfrey Ndumba Mbogori and Another V Nairobi City Council (2018) eKLR** this court finds and holds that this instant cause is not an appropriate one for award of exemplary damages and the same is denied.

62. The court is of the view that although the termination was unfair and unlawful there was no outright malice or ill-will on the part of the Respondent as a legal entity notwithstanding the personal differences between the Claimant and RW1, the Managing Director of the Respondent. The facts and circumstances of this cause are therefore distinguishable from those that obtained in **Peter Kamwei V Standard Group Limited (2016) eKLR**. This is not to say that the Claimant would not have been granted the same had the circumstances, facts and evidence provided this court with a sound foundation to granting the same.

(h) Damages on constitutional violations

63. No evidence was tendered by the Claimant in support of this relief and further there is no submission on the same from counsel for the Claimant in the written submissions. Redundancy need not affect many employees at the same time, it could affect a single employee. If the Claimant is of the opinion that she was discriminated against she ought to have supported this position by way of evidence and pleaded the same properly on the particulars of discrimination. The Claimant failed to do so and the submission by counsel for the Respondent on this issue is persuasive towards this court not granting the same. In the circumstances this court denies the Claimant any award under this sub-head.

(i) Certificate of service

64. It was confirmed during the hearing that a certificate of service was issued and received by the Claimant and as such there is nothing for this court to deal with in that regard.

(j) Compensation for unfair termination

65. Section 49(1)(c) of the Act caps the maximum compensation for wrongful dismissal or unfair termination at twelve months gross salary, and an award under this head is subject to statutory deductions.

66. Further Section 49(4) provides for the factors that this court should consider when making an award under this head. Counsel for the Claimant has requested for the maximum award of 12 months gross salary majorly on the ground that the Respondent was grossly unfair in the manner and style in which they handled the Claimant denying her both substantive and procedural fairness. Counsel for the Claimant has relied on a number of decisions where courts awarded the maximum compensation notably **Moses Kaunda Moro V CMCC Motors Group LTD (2013) eKLR** and **Rael Mwinayathi Mutinda -V- Kenya Commercial Bank Ltd (2019) eKLR**.

67. It is this court's view and holding that the Claimant was unfairly terminated, as already indicated in this judgment and she is therefore entitled to reasonable compensation.

68. This court takes into consideration the following factors. The Claimant had worked for the Respondent for a considerably lengthy period of seven years (like the good old Jacob worked for his uncle Laban in the Good Book); the termination was grossly unfair both in substance and procedure; the Claimant did not contribute to the termination as there is no evidence of the same; and that the court has ruled out the practicability of ordering reinstatement or re-engagement.

69. The Claimant testified that she now has another job but she did not indicate how long it took her to obtain that new job. The matter has also dragged in court for about four years, yet the Respondent has not paid any dues to the Claimant allegedly on the ground that the Claimant has refused to execute a discharge voucher, which the Claimant deemed to deny her legal rights to press for compensation. Nothing would have stopped the Respondent from depositing the tabulated dues into the account of the Claimant, albeit on without prejudice basis, as the same would still have been considered by this court in determining the final dues. Such gesture would also have demonstrated good faith and will on the part of the Respondent notwithstanding that the Claimant was not willing to sign off for the same as the final dues payable.

70. Doing the best that this court can and considering all the relevant factors under Section 49(4) of the Act and the financial status of the Respondent as pleaded by RW1 in her testimony, although no documentary evidence was tendered, but taking judicial notice of the effects of Covid 19 on travel and hospitality industry in which the Respondent operates this court awards to the Claimant ten (10) month's gross salary as compensation for unfair termination on the alleged redundancy. The amount is calculated as hereunder;

Kshs.150,600/- X 10 = 1,506,600/=

(k) Costs

71. Costs follow event, that is the general principle, and this court has no reason to depart from that path in this matter. The Claimant is awarded costs of this cause based on the award made and the same may be taxed or agreed between the parties.

(X) DISPOSAL

72. This court issues the following orders in final disposal of this matter

(a) A declaration be and is hereby issued that Claimant's termination from Respondent's employment on account of redundancy was uprocedural, unfair, and unlawful.

(b) The Claimant is awarded the following against the Respondent: -

(i) Unpaid leave days	- Kshs.35,140/=
(ii) Severance pay	- Kshs.527,100/=
(iii) Payment <i>in lieu</i> of notice	-Kshs.150,600/=
(iv) Salary for July 2017	-Kshs.100,400/=
(v) Compensation for unfair termination	<u>-Kshs.1,506,600/=</u>
TOTAL	<u>-Kshs.2,319,840/=</u>

(c) The total amount in (b) above shall earn interest at court rates from the date of this judgment till payment in full.

(d) Costs to the Claimant.

DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAIROBI THIS 24TH DAY OF SEPTEMBER 2021.

DAVID NDERITU

JUDGE