



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NUMBER 617 OF 2014

BETWEEN

TIMOTHY NJOROGE KABUI.....CLAIMANT

VERSUS

GATEWAY MARINE SERVICES LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

A.I. Onyango & Company Advocates for the Claimant

A.B. Patel & Patel Advocates for the Respondent

JUDGMENT

1. Through his Statement of Claim filed on 8th December 2014, the Claimant seeks Judgment against his former Employer, the Respondent herein, in the following terms:-

- a) Correction of the Certificate of Service, to show that the Claimant was the Clearing and Forwarding Manager.
- b) 1 month salary in lieu of notice at Kshs. 130,703.
- c) 12 months' salary in compensation for unfair termination at Kshs. 1,568,436.
- d) Annual leave of 30 days at Kshs. 130,703.

Total...Kshs. 1,829,842

- e) General damages for malicious circulation of the Claimant's name.
- f) Costs.
- g) Interest.

2. The Claimant avers he was employed by the Respondent as Clearing and Forwarding Manager, through a letter of appointment dated 1st April 2012. He avers that his contract was terminated by the Respondent on 18th August 2014 for no reason. He worked for 2 years and 9 months. He was not accorded a fair chance to state his case. There was no valid reason justifying termination. He never received a warning letter. The Respondent purported to demote the Claimant to Port Operations Assistant, and issued Certificate of Service indicating the Claimant served as Port Operations Assistant.

3. The Respondent filed its Statement of Response and Counterclaim on 28th May 2015. The Claimant's monthly salary was Kshs. 129,132, as shown in his July/August 2014 pay slips, not Kshs. 130,703 as claimed. He misappropriated Respondent's funds. He was entrusted Kshs. 1,084,000 by the Respondent to pay to Radiation Protection Board, as fees on behalf of Respondent's Clients. The Claimant supplied fake receipts from the Radiation Protection Board, purporting to show that money had been paid to the Board. He admitted his involvement, at a meeting convened by the Respondent. He undertook to repay the sum. He repaid in part, leaving a balance of Kshs. 413,318. He did not have

a clean record. He directed Respondent's Client to send money to an account which did not belong to the Respondent. The Respondent lost business as a result of Claimant's dishonesty. One Client called Om Nom Nom Limited took away business from the Respondent worth Kshs. 2 million. The Claimant was called for a disciplinary hearing. He did not turn up. He was fully aware of the reasons justifying termination. Summary dismissal was in accordance with the law. He was not demoted. He was assigned a new role and signed the Job Description letter dated 25th July 2014. His salary did not change. He was fairly dismissed. His Claim has no merit.

4. The Respondent claims from the Claimant, the amount of Kshs. 413,318; interest; general damages for loss of business and reputation; costs of the Claim and the Counterclaim; and any other suitable relief.

5. The Claimant filed Response to Counterclaim on 3rd June 2015. His position is that he does not owe the Respondent the sum of Kshs. 413,318, and did not occasion any loss of business and reputation to the Respondent. The Respondent connived to avoid paying fees to the Government, and deliberately procured fake receipts for its record. The Claimant was a mere agent in the fraudulent scheme. The Claimant urges the Court to reject the Counterclaim.

6. The Respondent denies involvement in any fraudulent scheme, through its Response to the Response to the Counterclaim, filed on 17th June 2015.

7. The Claimant gave evidence on 3rd June 2015, 17th March 2017 and 30th June 2017 when he rested his case. Respondent's Accountant, Alamin Abdulwahab Ahmed Majid, gave evidence on 27th September 2017. Managing Director Bob Wyn gave evidence on 1st October 2018, when the hearing closed. The Cause was last mentioned on 23rd November 2018, when Parties confirmed filing of their Closing Submissions.

8. **The Claimant** restated in his oral evidence, that he was employed by the Respondent as Clearing and Forwarding Manager, under the terms and conditions of service contained in the letter of appointment dated 1st April 2012. He was later advised he would be working outside the Office as a Port Operations Officer. It was a demotion. This was done in writing. There was a new Clearing and Forwarding Manager. The Claimant was to report to him. He signed new Job Description. The Certificate of Service issued to the Claimant was backdated to show the Claimant worked throughout as a Port Operations Officer.

9. He did not write the petty cash vouchers exhibited by the Respondent in support of the allegations against the Claimant, of involvement in fraud. The vouchers were written by the Declaration Officer. Claimant's role was to check the amount raised by the Officer. Managing Director authorized the Declaration Officer to pay. The money was intended to be paid to the Radiation Board at the Port. The Board wrote to the Respondent, saying receipts held by the Respondent, did not originate from the Board, and were forged. The Respondent paid cash to the Board to have goods released. Receipts came to the Respondent with the Declaration Officer. The Claimant was not a participant in this arrangement. He does not owe the Respondent any money.

10. The Claimant did not attend the meeting of 30th January 2014, referred to at page 68 of the Respondent's documents. He was not served with a warning at page 69. Warnings at page 71 and 72 relate to another Employee named Bill Saidi. The e-mail at page 73 relating to a Client named Om Nom Nom, asking for Kshs. 635,400 to be paid to an Account at Family Bank, originated from another Employee Anne, not from the Claimant.

11. The Claimant signed change of Job Description. His salary was changed from Kshs. 130,000 to Kshs. 50,000. He accepted the new role under protest. Termination was on 18th August 2014. The letter of termination was served upon the Claimant by another Employee of the Respondent. The Claimant denies that he was issued warning letters before dismissal. He did not desert. He was called a thief by the Respondent. His reputation was injured. He has not been able to secure alternative job.

12. Cross-examined, the Claimant testified that he has been farming since he left employment. He did not indicate that he signed fresh Job Description under protest. He did not have any pay slip showing that his salary was reduced to Kshs. 50,000 from Kshs. 130,000.

13. Anne was Claimant's replacement, not Assistant. Termination was on 18th August 2014. The Claimant did not go to work after this date. The Om Nom Nom e-mail is dated 13th August 2014. There is no problem in saying that Anne replaced the Claimant. She replaced him on 25th July 2014. The Claimant did not desert.

14. The Respondent circulated an e-mail to all its Clients, exhibit TNK 5 of the Claimant's documents, alleging the Claimant was no longer an Employee of the Respondent, having been dismissed on account of fraud. The e-mail was availed to the Claimant by a Client of the Respondent in confidence. It is not fabricated. It does not show where it originated from. Claimant's career was damaged. The Respondent was being malicious, in alleging that the Claimant deserted.

15. It was Claimant's responsibility, as Manager, to ensure that importers paid inspection fees. He would check if petty cash vouchers, tallied with the goods. He endorsed payments. Receipts were brought back to the Office. He found out that money raised in the petty cash vouchers, was not being paid in full. This was after 1 ½ years. He questioned the Declaration Officer once. He was informed that payment was not made in full. The letter from the Radiation Board to the Respondent, dated 21st January 2014, did not come as a surprise to the Claimant.

16. The Office Manager Julia found out payment was not being made in full. The Claimant told her that the Managing Director was aware. There was a meeting held pursuant to this letter from the Radiation Protection Board. The Claimant told Julia declaration being made was false. The Claimant did not recall where the Managing Director was at the time.

17. The Claimant did not inform the Respondent that he misappropriated Respondent's money, to cater for his Wife's ailment. He was not a party to illegal transactions. He did not jump ship when he realized that the fraud had been uncovered. He did not desert.

18. Redirected, the Claimant told the Court he was a Clearing and Forwarding Manager. The Certificate of Service wrongly identifies him as a Port Assistant. He did not steal any money from the Respondent. Petty cash voucher would be raised. 1/3 of the stated amount was paid to the Government. 2/3 remained in Respondent's Accounts Office. There was no deduction on Claimant's salary made, as alleged by the Respondent. He did not receive the August 2014 pay slip. If deduction was made for 7 months at the stated sum of Kshs. 30,000, the total paid would be Kshs. 210,000 against the alleged total of Kshs. 1,084,000. The balance would not be Kshs. 413,318. The figures do not add up. The letter from the Radiation Board is dated 21st January 2014, while termination took place 8 months after, in August 2014. The Respondent wrote to the County Labour Office on 26th August 2014, alleging the matter was still under investigations.

19. Annual leave records exhibited by the Respondent show the Claimant was owed annual leave of 35 days. Certificate of Service gave the wrong designation. He did not originate the e-mail at page 73 of Respondent's documents. The Respondent circulated a malicious e-mail to potential Employers, damaging Claimant's employability.

20. **Majid** confirmed that the Claimant was in charge of clearing and forwarding. Claimant's contract was terminated fairly. He raised petty cash vouchers. The Respondent found out that money was not being paid to the Government as required. Radiation Protection Board raised an issue, saying the Respondent had not paid certain amounts. The Respondent forwarded receipts to the Board. The Board sent back the receipts, saying they were not genuine receipts issued by the Board. The money was regulatory fees. The Respondent investigated and found out that a total amount of Kshs. 1,084,000 had not been paid.

21. There was a discussion involving the Claimant, Office Manager and the Director. It was agreed the money is recovered from the Claimant. The Claimant paid a total of Kshs. 304,000 in cash. He had an injury which required he undergoes surgery. Out of leniency, the Respondent stopped recovery of the misappropriated money from the Claimant. He deserted. The Respondent computed Claimant's terminal dues, as at the end of August 2014. There was an e-mail sent from Anne's account. Anne was new and acting in Claimant's position. The e-mail advised that money is paid in a bank account which did not belong to the Respondent. The Claimant disappeared when an enquiry on this ensued. His terminal dues were applied to offset his liability to the Respondent. Terminal benefits amounted to about Kshs. 200,000. He owed the Respondent about Kshs. 600,000. He owes the Respondent Kshs. 413,418.

22. The Respondent paid what was due to the Government in full, not in fractions as alleged by the Claimant. The receipts on record show this. The Claimant misled the Respondent on the petty cash vouchers.

23. Majid told the Court on cross-examination that he joined the Respondent on 14th July 2014. The Claimant was dismissed in August 2014. Majid did not work for less than a month with the Claimant; he had another contract beginning February 2014. He did not have the February contract in Court. Petty cash vouchers go up to January 2014. Majid was not in employment then. Due process was followed. There was a meeting, agreement on repayment, and tabulation of dues. Page 69 of Respondent's documents refers to 2nd warning. The Witness did not know if there was a 1st Warning. The warnings at page 71 and 72 were directed at Bill Saidi, not at the Claimant. Pay slips do not show deduction of Kshs. 30,000 monthly. The Claimant was injured and recovery stopped. He was not dismissed because of the letter from the Radiation Protection Board. Redirected, Majid clarified that he worked on short term contracts before July 2014.

24. **Bob Wyn** told the Court he terminated Claimant's contract, after the Claimant was involved in embezzlement of funds allocated to clearing of Clients' containers. The Claimant admitted embezzlement in a meeting called by the Respondent. He undertook to pay back, as shown at page 68 of Respondent's documents. Kshs. 1,084,000 had been entrusted to the Claimant. There was a second incident of fraud involving the Claimant and the Kenya Dairy Board. The Claimant alleged Kenya Dairy Board account was frozen. The Claimant advised money is paid in another account. Kenya Dairy Board confirmed its account was not frozen. This second incident was reported to the Police and Anti-corruption Authorities. His contract was eventually terminated for theft of Respondent's property. The Claimant had not repaid a sum of Kshs. 413,418 by the time he left employment. The Respondent did not damage Claimant's reputation. The Respondent is the biggest Company involved in import of refrigerated containers. Its operations are above-board. The Respondent looked for the Claimant to hand him the letter of termination. The Claimant just disappeared. The Respondent wrote to the Labour Office informing the Office about the disappearance.

25. Wyn told the Court that the Respondent is a good Employer. It has employed many Kenyans, and always strives to find solutions in its workplace grievances and disputes. It has a good track record.

26. Cross-examined, Wyn told the Court there are other disputes filed by Respondent's former Employees in this Court.

27. He did not recall the specific date when the Claimant was employed. The Claimant owed the Respondent Kshs. 1,084,000. He was to pay Kshs. 30,000 monthly installment. He owed Kshs. 413,418. Wyn told the Court the figures were arrived at by Respondent's Accountants.

28. The Claimant did not sign warning letter dated 31st January 2014. The letters to Bill Saidi do not relate to the Claimant. The e-mail at page 73 was from Anne. The warning letter was in January 2014. Termination was in August 2014. There must have been other warnings in between.

29. Wyn signed some of the exhibited petty cash vouchers. Accountant signed, as did the recipient. Action was taken against Anne and other Employees involved. Billy Saidi resigned while Anne was dismissed. Fraud was reported to the Police and investigation is ongoing. Wyn did not have OB number to support this. He did not agree that the Respondent failed to observe fair procedure in terminating Claimant's contract. His contract was terminated after the Claimant failed to show up for disciplinary hearing. The letter of appointment states the Claimant was Clearing and Forwarding Manager. His Certificate of Service describes him as a Port Operations Assistant. He was demoted. Claimant's exhibit TNK5, addressed by the Respondent to all its esteemed Clients, is from one Sally Kalisa. Sally was second to Wyn at the time she wrote this notice to Clients. Redirected, Wyn told the Court that he did not do the accounts leading to the figures given in pursuit of the Counterclaim; Respondent's Accountants were responsible. Anne was under the Claimant. The e-mail on Kenya Dairy Board, originated from the Claimant's Clearing and Forwarding section. Police investigation is ongoing. The e-mail from Sally to Clients did not have a

specific addressee. When the Claimant left employment, he was Port Operations Assistant.

30. The issues in dispute are: whether the Certificate of Service issued to the Claimant is erroneous and in need of correction; whether Claimant's contract was terminated fairly; whether his reputation was injured by the Respondent; whether he merits the prayers sought; whether the Respondent suffered loss occasioned through Claimant's fraudulent activities; and whether the Counterclaim should be allowed.

The Court Finds:-

A. Certificate of Service

31. The contract dated 1st April 2012 is clear that the Claimant was employed as the Clearing and Forwarding Manager.

32. On 25th July 2014, shortly before termination, he signed a Job Description Agreement with the Respondent. His job title was changed to Port Operations Assistant. He signed this Agreement voluntarily. His salary as shown in the July and August 2014 pay slips did not change. There is no evidence at all that he was to be paid Kshs. 50,000 under the new designation.

33. His contract was terminated on 18th August 2014. At this time his designation was Port Operations Assistant. The Certificate of Service of the same date, states that the Claimant was employed by the Respondent as a Port Operations Assistant, *with effect from 1st April 2012.*

34. This information is incorrect. The Certificate of Service ought to show that the Claimant worked as Clearing and Forwarding Manager from 1st April 2012, to 25th July 2014 when his designation was changed to Port Operations Assistant. He worked as Port Operations Assistant from 25th July 2014 to 18th August 2014 when his contract was terminated.

35. ***The Respondent shall reissue the Certificate of Service to the Claimant, bearing the full information at paragraph 34 above.***

B. Unfair/Fair termination

36. The Respondent had responsibility in clearing and forwarding its Clients' commodities, to pay fees to Radiation Protection Board under the Ministry of Health, for radio-analytical services.

37. The Respondent sent copies of receipts to the Board, which were said to have originated from the Board, for authentication. The Board wrote back on 21st January 2014, advising that the receipts were not issued by the Board. They were not genuine receipts of money received by the Board from the Respondent.

38. From the evidence on record, the Claimant and other Officers were involved in generation of these fake accounting documents. The Claimant explains that this was the official policy of the Respondent. Money paid by Clients was retained by the Respondent, with only 1/3 paid to the Government. The fake documents were necessary for accounting purposes.

39. While the Court agrees with the Claimant that more than one Employee was involved, it does not agree that this was an official policy of the Respondent. The Respondent is a reputable Clearing and Forwarding business, a leader in the business of importation of refrigerated containers. Its top management would not engage in fraudulent activities meant to avoid paying to the Radiation Board what is entrusted by Clients to the Respondent. It would certainly not write to the Board enquiring about the suspect receipts, if it was company policy not to meet Clients' obligation to Radiation Protection Board. The Claimant and other Employees who were subsequently dismissed, or who resigned, connived to divert money meant to be paid to Radiation Protection Board. The Claimant cannot be absolved from this sleaze, having been the Officer responsible for the entire clearing and forwarding department. He ought to have known what other concerned Officers were up to, and protected the resources and reputation of the Respondent. There would have been valid reason to justify termination, if the reason stated by the Respondent, was about the fake receipts purported to have issued from the Radiation Board. The Respondent would have been entitled to summarily dismiss the Claimant on this ground, if other disciplinary sanction had not been meted out to the Claimant, based on the specific allegation.

40. There is a letter of warning dated 31st January 2014, issued to the Claimant by the Respondent. The letter alleges that the Claimant was involved in swindling the Respondent of its money, under the guise to making payments to the Radiation Protection Board. The amount involved was quoted at Kshs. 1,084,000.

41. The Claimant was advised this amounted to gross misconduct "*and immediate dismissal should take place.*" At the same time he was advised to pay the sum of Kshs. 1,084,000 to the Respondent by monthly installments. In default, immediate dismissal would follow.

42. The Claimant was told that the warning served as a second warning. It is not disclosed when, and for what reason, the first warning issued. The letter of 31st January 2014 nonetheless was a letter of warning, issued upon the Claimant over his role in the radiation sleaze.

43. The warning followed a meeting of 30th January 2014, in which the Respondent alleges to have given the Claimant a hearing, and at which meeting the Claimant undertook to pay installments of Kshs. 30,000 for 1 year, to satisfy the demand of Kshs. 1,084,000. There was therefore some kind of a hearing, as shown in the minutes dated 30th January 2014. This meeting dealt with the issue relating to misappropriation of Kshs. 1,084,000. The Claimant was warned, and advised to repay the money through installments. This issue was therefore not a live issue in August 2014, when the Claimant's contract was terminated. He was punished through warning, and required to repay alleged debt to the Respondent, by way of monthly installments.

44. Termination letter does not refer to warning issued in January 2014. It does not allude to Claimant having defaulted in repayment of the sums allegedly owed. There would be no justification after the warning, to terminate Claimant's contract, based on the Radiation Board affair.

45. The letter of termination, quite rightly, does not revisit the alleged loss of Kshs. 1,084,000. At the time of termination, this alleged loss was not a live issue, having been dealt with 8 months back. The letter of termination states termination "is due to the fact that you instructed a Client to pay money for the Kenya Dairy Board, into an account that was unknown to them [see attached e-mail] and consequently was discovered to be an account assigned by you."

46. To resolve the question whether termination was fair, this is the allegation that ought to exercise the mind of the trier of facts.

47. Evidence of wrongdoing, and the Claimant's role in it, with regard to the Kenya Dairy Board transaction, is contained at page 73 of the Respondent's documents. The e-mail is from Ann. It is addressed to Michael Mugo and Eric Andre. It is in the following words:

"Please note that we have verified the two containers and [sic] there is 7% of the cif value [8421700.015] payable to Kenya Dairy Board. Kindly make payment/transfer to their agent, FREJA KENYA LTD, A/C O9600002953, FAMILY BANK, Kshs. 635,400."

48. The Respondent has not shown what part the Claimant played, in the transaction. He is not the author of the e-mail. He is not the addressee. His name does not feature in the e-mail. Majid told the Court that Anne was acting in Claimant's position. What linked the Claimant then, to this transaction? There is no evidence at all showing that the Claimant was involved.

49. Section 43 of the Employment Act requires that, in any claim arising out of termination of contract, the Employer shall be required to prove the reason or reasons for the termination, and where the Employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45. The reason, or reasons, must be matters that the Employer at the time of termination, genuinely believed to exist, which caused the Employer to terminate the services of the Employee.

50. The Respondent has not proved the reason, or reasons for termination. It cannot be said from the e-mail at page 73 of Respondent's documents, that the Respondent genuinely believed the Claimant was involved in the Kenya Dairy Board transaction. He did not author the e-mail; another Officer was acting in his place; and he was not mentioned in any way, in the e-mail. Evidence from Majid and Wyn does not place the Claimant at the centre, or even fringe, of the questionable Kenya Dairy Board transaction.

51. Termination based on the allegation contained in the letter of termination, was not fair under Section 45 of the Employment Act. No valid reason, or reasons existed.

52. The e-mail is dated 13th August 2014. Termination followed, 5 days later, on 18th August 2014. There was no disciplinary process in any form, in these 5 days. There was no hearing of any nature. There were no charges placed before the Claimant. He was not asked to show cause, why he should not face disciplinary sanction. He was not heard. In the letter to the Labour Office dated 26th August 2014, the Respondent discloses that the matter was still under investigation. Why dismiss the Claimant for allegation still under investigations? The Respondent has not shown that termination was procedurally fair, under Sections 41 and 45 of the Employment Act 2007. The Claimant was not heard, in the company of a Colleague, or a Trade Union Representative at the shopfloor level. Termination was unfair on account of procedure.

53. Pay slips exhibited by both Parties show the Claimant earned a monthly salary of Kshs. 129,132. It is not clear where he derives his figure of Kshs. 130,703 from.

54. Termination was fundamentally flawed on substantive and procedural grounds. The Court has taken into account the circumstances of termination as recommended under Section 49[4] of the Employment Act. Default was both substantive and procedural. The Claimant worked for 2 years 4 months. His contract was indefinite, and the Claimant would have expected to work until retirement. He states he has not been able to secure another job. His Certificate of Service as concluded above did not have correct details. There was an e-mail circulated by the Respondent, which the Claimant states, adversely affected his stock in the labour market. He has not received any terminal benefits from the Respondent. **He is granted compensation for unfair termination, equivalent of 8 ½ months' salary at Kshs. 1,097,622.**

55. **The prayer for notice pay is allowed at 1 month salary, at Kshs. 129,132.**

56. The Respondent exhibits a chart for Pending Leave Days as at 31st August 2014. The document is at page 77 of the Respondent's bundle. Leave balance for the Claimant is shown to be 35 days. The Claimant seeks balance of 30 days. The Court would assume he must have utilized 5 days which are not captured in Respondent's leave record. **He is allowed 30 days of annual leave pay at Kshs. 129, 132.**

57. He prays for general damages for loss of reputation, arising from the e-mail addressed to "All our Esteemed Clients" by Sally Kalissa, who was Bob Wyn's Deputy. The e-mail states:

"We wish to inform you that Mr. Timothy Kabui who was formerly our Head of C&F Department, ceased to be an Employee of Gateway Marine Services Limited as he was responsible for fraud in the Company. As such please find attached herewith our self-explanatory letter notifying you officially of the same."

58. The above statement is truthful. It is not a false statement, which was circulated with the aim of lowering the Claimant's stock in the labour market. The Claimant was involved in fraudulent activities revolving around the Radiation Protection Board. The Court has concluded above, that the Claimant was involved, with other Employees, in this fraud against the Employer. The Claimant was warned and made an

undertaking to pay certain amounts to the Respondent, in installments. It is not a false statement to say he was responsible for fraud. He was not implicated in the Kenya Dairy Board fraud, but he was part of the Radiation Protection Board fraud. The statement may have created the erroneous impression that the Claimant was dismissed because of the Radiation Board affair. He was of course not dismissed on this ground, but was warned and ordered to repay the money lost, to the Respondent, by installments. Dismissal was on the allegation that the Claimant was involved in the Kenya Dairy Board fraud, allegation the Court has found was not established. It is however correct that the Claimant was involved in fraud. The Respondent would have been justified in summarily dismissing the Claimant for the initial fraud. Sally's statement was not malicious. Furthermore, the Claimant has not established that his employability suffered. He has not given evidence showing he made application for a job from amongst the Respondent's "Esteemed Clients," and was denied a job, on account of Sally's letter. His prayer for damages has no merit and is rejected.

59. The Counterclaim is based on figures which do not add up. The Claimant was said to be indebted to the Respondent, in the sum of Kshs. 1,084,000. He allegedly committed to pay installments of Kshs. 30,000 monthly, in January 2014. The Respondent did not enforce this agreement through salary check-off. Instead, the Claimant was to receive his entire salary, and pay installments in cash to the Respondent. This is a strange arrangement for an Employer to recover what is believed to be a debt, owed by the Employee.

60. Kshs. 30,000 in a period of 1 year, would amount to Kshs. 360,000 only. The Claimant worked for 8 months from January to August 2014. The most he could have repaid is Kshs. 240,000. There was evidence by Majid that somewhere along the debt-recovery path, the Claimant was injured, and the Respondent, ceased recovery in a show of magnanimity. This would suggest that the Claimant did not even pay installments for 8 months. It was less. The installments were not reflected in the pay slips, probably because the Claimant was to pay in cash, after receiving his salary.

61. If the total debt was Kshs. 1,084,000, how has the Respondent arrived at the Counterclaim amount of Kshs. 413, 318? When did the Claimant pay the difference of Kshs. 670, 682 within the 8 months in question? The figures are jumbled up.

62. ***The Counterclaim has not been established, and is rejected.***

63. ***No order on the costs.***

64. ***Interest allowed at 14% per annum from the date of Judgment till payment is made in full.***

IN SUM, IT IS ORDERED: -

a) Termination was unfair.

b) The Respondent shall reissue the Certificate of Service with the correct details, as shown at paragraph 34 of this Judgment.

c) The Respondent shall pay to the Claimant: equivalent of 8.5 months' salary in compensation for unfair termination at Kshs. 1,097,622; notice pay at Kshs. 129,132; and annual leave pay at Kshs. 129,132 – total Kshs. 1,355,886.

d) The Counterclaim is rejected.

e) No order on the costs.

f) Interest allowed at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 22nd day of February 2019.

James Rika

Judge