



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 248 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

JOSEPHINE OBAGA MOGERE.....CLAIMANT

VERSUS

TELKOM KENYA LIMITED.....RESPONDENT

JUDGMENT

The Claimant herein moved this Court vide a Plaint dated 3rd May, 2004, Amended Plaint filed in Court on the 7th day of December, 2005 and the Re amended Plaint filed on 23rd April, 2007, in which the Claimant seeks the following reliefs:

- a) A declaration that the Defendant's suspension of the Claimant/Plaintiff from employment on 16th August, 2000 and the termination of the Plaintiff from employment on 27th May, 2002 was malicious, unlawful, null and void *ab initio*.
- b) Special damages for the unlawful termination in the sum of Kshs.5,020,924.00 together with interest thereon at Court rates from the date of filing of this suit until payment in full.
- c) General and Exemplary damages for injurious and malicious falsehood and for malicious suspension and termination of employment.
- d) Costs of the Suit together with interest thereon at Court rates from the date of filing of the suit until payment in full.
- e) Any other relief that this Court may deem fit to grant in the interest of justice.

The Defendant/Respondent in its Amended Statement of Defence filed in Court on 19th December, 2005 pursuant to leave granted on 1st December, 2005 and Further Amended Statement of Defence on the 8th May, 2007 averred the Plaintiff/Claimant's services were never wrongfully or otherwise terminated.

The Defendant/Respondent further avers that the Plaintiff/Claimant obtained a house loan fraudulently which lead to her suspension from duty. Further that the Defendant/Respondent lifted the suspension on 18th October 2001 on condition that the Plaintiff Claimant be:

- a) Demoted from senior typist scale 9 to typist scale 10
- b) Loss of withheld salary
- c) Final warning
- d) Be transferred from finance department

The Defendant/ Respondent contends that the Plaintiff/Claimant declined the offer and/or refused to resume duty and vacated office and in fact she opted to pay the Defendant/Respondent three months' salary in lieu of notice.

The Defendant/Respondent further contends that the Plaintiff's/Claimant's claim is misconceived, bad in law, frivolous and vexatious. Further, that the Plaintiff/Claimant is now seeking payment for services not rendered which is tantamount to unjust enrichment.

The Respondent urged the Court to dismiss the Claimant's suit with costs.

Evidence

On 5th December, 2016, the Claimant (CW1) adopted her witness statement dated 28th November 2016 and filed in Court on 30th November 2016 as her evidence in chief, in which she reiterates the averments in the Re Amended Plea.

She further confirmed that she was employed by the Respondent on 1st September, 1978 in the position of a messenger and redesigned as a typist on 3rd November, 1981. Further that on 6th September, 1982 she was promoted to typist III on permanent and pensionable terms.

CW1 avers that she rose through the ranks to the position of senior typist and maintained the same position until her services were terminated unlawfully by the Defendant on 27th May, 2002.

CW1 further avers that on 16th August 2000 the Respondent suspended her from duty on the allegation of involvement in fraudulent transaction in the purchase of a house on title number Nairobi/Block 96/6. That the allegation was found to be baseless and the suspension was lifted.

CW1 averred that she lodged numerous appeals to the Respondent's Managing Director protesting the decision to demote her and the harsh conditions of employment. However, she was not given audience by the Respondent. That through a letter dated 27th May, 2002 she made an enquiry as to why her name was removed from the payroll. That thereafter the Respondent maliciously and in total disregard to the rules of natural justice terminated the Claimant's services.

CW1 contends that her suspension, demotion and dismissal was malicious and unlawful.

On cross examination CW1 stated that the loan agreement for Kshs.1,200,000 to be used to purchase the house as well as the sale agreement for property Title No. Nairobi/Block 96/6 do not make specific reference to the title reference number of the said property. She further stated that she had initially sold the aforesaid house to one Mr. Onitita who later on resold the house to her.

On further cross examination CW1 stated that at the time she applied for the loan she had sold the house to Mr. Onitita. Further, that the Respondent later on accused her of fraudulently acquiring the loan.

CW1 contended that she was entitled to owner occupier of Kshs.14,000 per month as her scale was 8 and 9 and that prior to the personnel circular no 1B she was entitled to 12,000 but the same was adjusted upwards as from 1st March 2000 when the circular became effective.

CW1 further contended that she was suspended effective 16th August 2000 on half salary till the issue on the house is resolved and was asked to leave her current address for contact in the event the Respondent needed to communicate with her.

CW1 stated that the letter dated 12th October 2001 gave her conditions but did not ask her to resume duty. CW1 averred that she did not resume duty and that she was later terminated when she received a letter dated 24th May 2002 on grounds of vacating office. CW1 confirmed having received this letter on 3rd July 2002.

CW1 prays that the Memorandum of Claim be allowed as drawn.

The Respondent's case was heard on 30th April, 2018. RW1 (**Isaiah Kandie Kangugo**) testified that he was the Human Resource Officer with the Respondent at the time of the Claimant's separation with the Respondent.

RW1 adopted his witness statement dated 24th February 2017 and filed in Court on 28th February 2017 as his evidence in chief, in which he reiterates the averments in the Statement of Defence.

RW1 stated that the Claimant was involved in several disciplinary issues while in the employment of KPTC and the concerns were handled properly in accordance with the provisions of the POSTA CODE, Section J.

RW1 confirmed that the Claimant refused to resume duty and occasioned issuance of a letter of vacation of office dated 16th August 2002 under Posta Code section J 2.6.3. He further confirmed that the Claimant's services were terminated for failing to report back to work and absenting herself voluntarily for more than 48 hours allowed under the Postal Code Section J.

On cross examination RW1 stated that the Claimant was an employee before the vesting order took effect from 1st July 1999 when there was a split of Kenya Posts and Telecommunications Corporation into three entities, the respondent being one them. He went on to state that the Claimant was not vested to the Respondent nor any of the other 2 entities namely Postal Corporation of Kenya or Communication Commission of Kenya. RW1 further stated that the vesting list was not produced in court as proof that the claimant was not part of the Vesting Order.

RW1 on further cross examination confirmed that the Claimant had a disciplinary issue that involved the Claimant's acquisition of a house that was allegedly fraudulently acquired following which the Claimant was placed on suspension. The Claimant was thereafter recalled but she failed to report on duty and lodged appeals which RW1 confirmed to the Court were not stamped in receipt by the Respondent.

RW1 further stated that the Claimant was not frustrated prior to her dismissal.

On Re-examination RW1 stated that the List of vesting was not on record as it is a voluminous legal document that the Claimant was aware about and further that it is something the Court can take judicial notice of.

RW1 further confirmed that the Claimant faced disciplinary action while employed by KPTC and that when the Claimant left employment Telkom Kenya was not in existence as it came into operation on 1st July 1999.

RW1 urged the Court to dismiss the Claimant's Claim as she was given an opportunity to resume work but refused. Further RW1 stated that the Claimant's Claim is misplaced and ought to be dismissed with costs.

Parties proceeded to file and exchange written submissions.

Claimant's Submissions

In the written submissions the Claimant reiterated the contents of the Re Amended Complaint and her oral evidence in Court.

The Claimant submits that she was employed by the Respondent herein and that the testimony of DW1 as well the Respondent's assertion that she was not employed by the Respondent is baseless as evidenced by the array of letters from the Respondent herein suspending her from service, lifting her suspension, demoting her and finally dismissing her from work. The Claimant relied on the case of **Elijah Kipkoros Tonui V Ngara Opticians T/A Bright Eyes Limited (2014) eKLR** where the Court considered letters placed on record by the Claimant, made the following findings:

"There is abundant evidence showing the Claimant was, and the Court finds he was, an employee of the Respondent on the terms and conditions stated in the Statement of Claim."

The Claimant further submitted that the termination was without justification, unfair, unlawful, null and void *ab initio*. She further submitted that the termination which culminated from her suspension was in contravention of Section 10 of the Employment Act which provides that the terms of the Contract of Employment cannot be altered without the consultation of affected employees. The Claimant relied on the Authority of **Ronald Kampa Lugaba V Kenol Kobil Limited (2016) eKLR** where the Court held that the reduction of salary and demotion was contrary to Section 10(5) of the Employment Act that requires that an employee be consulted before the terms of employment are altered.

The Claimant submitted that the termination of her employment was unfair and unlawful as there is no valid reason given for her termination which was in total disregard of the provisions of Section 43 and 45 of the Employment Act. The Claimant relied on the case of **Barasa Paul Isaac V X for Security Solutions (Ke) Ltd (2015) eKLR** where it was held that:

"Termination of employment of an employee is unfair unless the employer proves that the same was founded on a valid and fair reason and that it was reached after following fair procedure."

The Claimant further relied on the Authority of **Fred A. Odhiambo V Attorney General & Another (2013) eKLR** where the Court stated that:

"From this provision, it is clear that the employee has to establish a prima facie case that a wrongful or unfair termination has taken place and once he has done, the evidential burden shifts to the employer to show on a balance of probability that the reason for termination was valid."

The Claimant further submitted that the reasons for her termination were false, malicious and baseless. She submitted that she was a unionisable employee and the Respondent ought to have accorded her a chance to be heard in the presence of a representative from her union. The Claimant relied on the case of **Mary Chemweno Kitui V Kenya Pipeline Company Limited (2014) eKLR** where the Court held in part that:

"Section 41 of the Employment Act is couched in mandatory terms. Where an employer fails to follow these mandatory provisions, whatever the outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of their union representative or in the presence of an employee of their own choice. The situation is dire where such an employee is terminated after such a flawed process without a hearing as such termination is ultimately unfair. The employee must be informed through a notice as to the charges and given the chance to submit a defence followed by a hearing in due cognisance of the fair hearing principles as well as natural tenets."

The Claimant further relied on the cases of **Shankar Saklani V DHL Global Forwarding (K) Limited (2012) eKLR** and **Paul Ngeno V Pyrethrum Board of Kenya Ltd (2013) eKLR**.

In conclusion the Claimant submitted that she is entitled to the reliefs sought in her Re-Amended Complaint as she has shown that her dismissal was done in breach of Section 41 of the Employment Act.

The Claimant pursuant to leave granted by the Court on 17th July, 2018 filed Claimant's Reply Submissions in which she reiterates the averments in the Submissions dated 27th June 2018.

The Claimant further submitted that she had placed material before the Court demonstrating that she was the Respondent's employee; the Respondent on the other hand did not adduce any evidence to prove or disapprove this assertion. The Claimant relied on the case of **James Musembi Mweu V Buzeki Enterprises Limited (2014) eKLR** where the Court held:

“It is trite that where an employee disputes the term of service, the employer who is bound to keep records under the Employment Act must produce the record to refute the Claim or else an adverse inference is made against the employer.”

The Claimant on the same issue also relied on the case of **Gladys Muthoni Mwangi & 20 Others V Barclays Bank of Kenya Limited & Another (2016) eKLR**.

The Claimant contends that the Court ought to be guided by the repealed Trade Disputes Act Cap 234 Laws of Kenya, and the Respondent's own internal rules, that is, Telkom Kenya Human Resources Policy Manual. Further, that the legal position at the time of termination was that parties are bound to comply by the terms of their contracts and internal disciplinary procedures as stated in the case of **Jonah Racha Abdi V Kenya Forestry Research Institute (2014) eKLR** where it was stated:

“An employer could terminate at will, without cause, subject to the employer's rules and regulations in place and on payment in lieu of requisite or reasonable notice.”

The Claimant further contends that the Respondent was bound to give her a fair hearing prior to her termination as held in the decision in **Bramuel Dibondo Musundi V Kenya Revenue Authority (2018) eKLR**.

In conclusion the Claimant urged to allow the instant Claim as drawn in the Re Amended Plea.

Respondent's Submissions

The Respondent submitted that the Claimant was an employee of the defunct Kenya Posts and Telecommunications Corporation (“KPTC”) on permanent and Pensionable terms, which was disbanded on 1st July 1999 vide vesting Order vide Legal Notice No. 157 of 1999 where three entities were created among them the Respondent herein.

The Respondent contends that the Claimant should have resigned from her previous employer KPTC and applied for a job with the Respondent. Further, that the fact that the Claimant was not included in the Respondent's payroll effective from the publication of the Legal Notice is further proof that the Claimant was not employed by the Respondent herein.

The Respondent further submitted that the Claimant's termination was effected on 27th May, 2002 when Chapter 226 Employment (Repealed) Act was the applicable law. The Respondent relies on the case of **Isaac Simiyu V Security Group (K) Limited & Another (2013) eKLR** where Ndolo J held:

“The Claimant's claim for unfair termination is brought under the Employment Act, 2007. Counsel for the Respondent however submitted that this law which came to effect on 2nd June 2008 could not apply to the cause of action in this case which arose on 11th February 2008. I agree and add that since there is no provision for retrospective application of the Employment Act, 2007 to employment contracts terminated before the commencement date, the applicable law in this case is the repealed Employment Act (Cap 226). Under the repealed law, an employer could terminate the employment by giving requisite notice and without assigning any reason for the termination.”

The Respondent further relied on Section 14(5) of the Repealed Act as well as the case of **Samuel G. Momanyi V SDV Transami Kenya Limited, Industrial Cause No. 358 of 2010 (2013) eKLR**.

The Respondent further submitted that it was well grounded in law while terminating the Claimant's services which was in accordance to the provisions of the POSTA CODE. Further, it is submitted that provisions of Section 14 and 16 of the Repealed Employment Act were duly complied with.

The Respondent contends that the Claimant deserted employment after she was offered revised terms of engagement by the Respondent. The Respondent further submits that the Claimant rejected the offer by failing to report to work and therefore cannot claim that she was terminated wrongfully or unfairly. The Respondent on the issue of absconding duty relied on the case of **Banking Insurance & Finance Union (Kenya) V Barclays Bank of Kenya Limited (2014) eKLR** where Mbaru J. held:

“I therefore find the summary dismissal of the grievant delivered on 12th July 2012 was valid to the extent that upon compliance with section 30 and 34 of the Act, the grievant failed to attend at his disciplinary hearing with no justifiable cause. The Respondent cannot therefore be faulted for the sanction taken as they had no knowledge or reason to know that the grievant had absconded his wellness session and opted to attend to a doctor of own choice. I therefore dismiss the Claim in its entirety and enter judgment for the Respondent in terms of the counter-claim....”

The Respondent further contends that failure by the Claimant to attend lawful duty and/or give written acceptance and/or grounds for rejection within 14 days was contrary to the provisions of the Posta Code J Section 2.6.3.2. Further, that upon failure to comply with this provision the Claimant lost all privileges which include withheld salary, house allowance, medical care, pension and gratuity.

The Respondent avers that the Claimant is not right to claim full salary from May 2002 to May 2009 when she would attain 55 years (set

retirement Age) and relied on the case of *Civil Appeal No. 25A of 2013 Elizabeth Kibe Wakanyi V Telkom Kenya Limited (2014) eKLR*.

In conclusion the Respondent submitted that there was valid reason to terminate the services of the Claimant and that its actions were in accordance with the provisions of the Employment Act Cap 226 (now repealed) and that the Claimant has relied on laws that were not in force at the time of her termination.

The Respondent urged the Court to dismiss the Claim with costs to the Respondent.

Determination

Having considered the pleadings, evidence, submissions and authorities cited by the parties, the following are the issues for determination:

1. Whether an employee-employer relationship existed between the Claimant and the Respondent herein
2. Whether the termination of the Claimant's employment by the Respondents was wrongful, unfair and unlawful
3. Whether the Claimant is entitled to the reliefs sought

Whether an employee-employer relationship existed between the Claimant and the Respondent herein

The Claimant in her pleadings, evidence and submissions averred that she was employed by the Respondent herein vide a letter of Appointment dated 6th September, 1982 as a Typist III. She further averred that she rose through the ranks to the post of senior typist and maintained the position until 27th May 2002 when the Respondent terminated her services.

The Claimant further submitted that she was indeed an employee of the Respondent as she had attached letters from the Respondent herein, suspending her (dated 16th August, 2000), lifting the suspension (dated 12th October, 2001). She finally a letter terminating her services (dated 27th May 2002) and relied on the case of *Elijah Kipkoros Tonui V Ngara Opticians T/A Bright Eyes Limited (2014) eKLR* where the Court considered letters placed on record by the Claimant and made the following findings:

“There is abundant evidence showing the Claimant was, and the Court finds he was, an employee of the Respondent on the terms and conditions stated in the Statement of Claim.”

The Respondent on the other hand contends that the Claimant is not its employee but was rather employed by the Kenya Posts and Telecommunication Corporation (KPTC) (now defunct) on permanent and pensionable terms. That the Claimant ought to have resigned from her position and apply for employment with the respondent.

RW1 further testified that following the Vesting Order under Legal Notice 157 of 1999, several employees including himself were transferred from Kenya Posts and Telecommunication Corporation. He further testified that the Claimant was not included in the list as provided in the Vesting Order.

Based on the pleadings, evidence and submissions on record it is my finding that the Claimant was indeed an employee of the Respondent as it is the respondent who suspended the claimant from duty by letter dated 16th August 2000 after the vesting order and further the respondent who lifted her suspension by letter dated 12th October 2001. It is further the respondent who dismissed the claimant from employment by letter dated 27th May 2002.

Further the Respondent did not produce the vesting order to prove that the claimant's name was not included in the vesting order or provide any proof that those not in the vesting order were not employees of the respondent.

The letters from the Respondent attached to the Notice to Admit Documents filed by the Claimant are compelling evidence that there existed an employer-employee relation between Respondent and the Claimant. In the case of *Elijah Kipkoros Tonui V Ngara Opticians T/A Bright Eyes Limited (2014) eKLR* where it was held:

“There is abundant evidence showing the Claimant was, and the Court finds he was, an employee of the Respondent on the terms and conditions stated in the Statement of Claim.”

Was the termination therefore wrongful, unfair and unlawful?

The Claimant submitted that her termination was without justification, wrongful, unfair and unlawful and was marred with malice as she was not accorded a hearing before her employment was terminated as per the rules of natural justice as provided for under Section 17 of the repealed Employment Act.

The Claimant further submitted that the legal position at the time was that parties were bound to comply with the terms of the Contracts and the internal disciplinary procedures.

The Respondent on the other hand submitted that it was entitled to terminate the Claimant's employment and it so did in compliance with the provisions of the repealed Employment Act, Cap 226. The Respondent further submitted that its actions were in accordance with the provisions of Section 14(5) and 16 of the repealed Act.

At the time of the termination of the claimant's employment the applicable law was the Employment Act (Repealed) Cap 226 which did not provide for procedural fairness.

In *Anthony Makala Chitavi V Malindi Water & Sewerage Company Limited (2013) eKLR*, Radido J. held as follows:

“Section 41 of the Employment Act, 2007 has now made procedural fairness part of the employment contract in Kenya. Prior to the enactment of the Act, the right to a hearing was not part of the employment contract unless it was expressly incorporated into the contract by agreement/staff manuals or policies of the parties or through regulations for public entities.

An employer was free generally to dismiss for a bad reason or a good reason but on notice or payment in lieu of notice. The employer could even dismiss for no reason at all. There was no obligation to notify or listen to any representations by the employee.”

Similarly, the case of *Ezekiel Nyangoya Okemwa V Kenya Marine & Fisheries Research Institute (2016) eKLR*, where Rika J held as follows:

“Employers had no obligation in observing the principles of natural justice, in termination of contracts of employment. The Courts have explained that under the old employment law in Kenya, Employers could terminate contracts of employment at will, for good cause, bad cause or no cause. At the time, employment was at the will of the employer.”

Besides the Employment Act (repealed), the respondent was bound by the provisions of the POSTA CODE which did not provide for a hearing before termination.

Having considered both parties submissions, the POSTA CODE as well as the Applicable law at the time (the Employment (Repealed) Act, Cap. 226), I find that the Claimant's termination was well founded on the provisions of the POSTA CODE as well as the Employment (Repealed) Act, Cap. 226.

The POSTA CODE J under Section 2.6.3.1 provides as follows:

“An employee who, without leave or excuse acceptable to the corporation absents himself from duty for more than forty-eight consecutive hours commencing from the time he is expected to report for duty does not do so, will be regarded as having vacated his office. Salary will be admissible only up to, and including, the day before the first full day of absence commences, Vacation of office shall involve loss of pension and gratuity rights and privileges.”

From the evidence at hand the Claimant did not resume duty after she was issued with the letter lifting her suspension dated 12th October, 2001. There is no evidence adduced by the Claimant that she resumed duty until her services were terminated on 27th May 2002. She did not even write to state that she was not resuming duty. What is on record are letters of complaint from the Claimant against her demotion.

In view of the fact that she risked being dismissed for failing to resume duty, the Claimant ought to have resumed duty and then follow up her appeals against her demotion and other terms of her reinstatement as set out in the letter dated 12th October, 2001 while on duty. Her contention that the termination of her employment was wrongful has no basis in law.

Remedies

The claimant prayed for the following remedies –

1. Unpaid twenty one (2) months half salary withheld from August 2000 to May 2002 at Kshs.14,420 per month..... Kshs155,804
2. Unpaid house allowance withheld between March 200 and May 2002 at Kshs.2,000 per month (difference between Kshs.12,000 given per month and Kshs14,000 due per month..... Kshs.58,000
3. Unpaid three (3) months' salary in lieu of notice at Kshs.14,420
per month..... Kshs.43,260
4. Unpaid leave travel allowance from July 200 to June 2001 at Kshs.7,500 per month..... Kshs.7,500
5. Loss of full salary from May, 2002 to May, 2009 at Kshs.14,420 per month for 108 months..... Kshs.1,557,360
6. Loss of House Allowance from May, 2002 to May, 2009 at Kshs.14,000 per month for 108 months..... Kshs.1,512,000
7. Loss of Leave travel allowance from July 2001 to May 2009 at Kshs.9,000 per

annum..... Kshs.72,000

8. Loss of entitlement to outpatient medical care as per personnel

Circular No. 1“B” of 2000 Contribution “B” May 2002 to

May 2009..... Kshs.224,000

9. Pension (being $\frac{3}{4}$ of the salary of the entire term of employment until retirement age)..... Kshs.891.000

10. Loss of career earnings on account of promotions..... Kshs.500,000

The letter reinstating the claimant stated as follows –

“12th October 2001

Ms Josephine O. Mogere

Senior Typist

Thro’ AM/Credit Control

Thro’ GM/Finance &Accounts

Thro’ AGM/Finance &Accounts

LIFTING OF SUSPENSION

Our letter of 8th December, 2000 on account of you obtaining a house loan of Kshs.1.2 million and your response dated 29th January 2001, refers.

This is to inform you that your case was accorded careful consideration but the same way found unacceptable.

Consequently, and decision was reached to institute the following disciplinary measures against you.

1. To lift suspension with effect from the date you resume duty with forfeiture of half salary withheld.

2. You are to be demoted from a Senior Typist (Scale 9) to Typist (Scale 10) from the date you resume duty.

3. You are also to be transferred from your present duty station to Operations and Maintenance (O & M) department. You are therefore required to report to General Manager/O & M to work under Manager/Power Plant as soon as you are released from your present duty station.

4. Lastly, you are served with a final warning against commission of similar or any other offence within 12 months from the date of receipt of this letter as this will call for dismissal from service.

Issued in duplicate; copy to be noted and returned.

SIGNED

K. MIRE (MISS)

For; GM/HUMAN RESOURCES”

Further Section 2.6.3.2 of the POSTA CODE provided as follows

“An employee who, without leave or excuse acceptable to the corporation absents himself from duty for more than forty-eight consecutive hours commencing from the time he is expected to report for duty does not do so, will be regarded as having vacated his office. Salary will be admissible only up to, and including, the day before the first full day of absence commences, Vacation of office shall involve loss of pension and gratuity rights and privileges.”

Further, under Typical Punishments, Posta Code, Section 4 permitted reduction of salary and reduction in rank. The claimant did not demonstrate that any of punishments meted against her as a condition for her reinstatement were unlawful or in contravention of POSTA

CODE or the Employment Act (repealed) that was in force at the time.

Further the Kenya Posts and Telecommunication Corporation (Pension) Regulations provides under Section 6(1) and (2) as follows:

(1) No officer shall have an absolute right to compensation for past service or to pension, gratuity or other allowances, nor shall anything in these Regulations affect the liability of an officer to be dismissed according to law;

(2) Where it is established to the satisfaction of the Minister that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld.

The Claimant is not entitled to payments after the date of termination to the anticipated date of retirement. There is no guarantee that the Claimant would have worked with the Respondent until she attained her retirement age. Payment of the same would amount to unjust enrichment that this Court cannot entertain.

In the case of ***D. K Njagi Marete Vs. Teachers Service Commission – Industrial Cause No 379 of 2009*** Rika J. held:

“What remedies are available to the Claimant “This Court has advanced the view that employment remedies must be proportionate to the economic injuries suffered by the employees. These remedies are not aimed at facilitating the unjust enrichment of aggrieved employees; they are meant to redress economic injuries in a proportionate way.”

The same decision was made in the case of ***Kenya Revenue Authority –V- Menginya Salim Murgani.***

In the end, I find that the claimant has not proved that the termination of her employment was wrongful or unlawful. I further find that she is not entitled to any of the payers sought. The entire claim therefore fails, with the result that the same is dismissed.

Each party should bear its costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF FEBRUARY 2019

MAUREEN ONYANGO

JUDGE