



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 454 OF 2016**

**BETWEEN**

**JANE MUTHOKA MWANIKI.....CLAIMANT**

**VERSUS**

**THE BOARD OF TRUSTEES, GOOD**

**NEWS CHURCH OF AFRICA.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

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*Martin Tindi & Company Advocates for the Claimant*

*Muitisya & Associates, Advocates for the Respondent*

**JUDGMENT**

1. Through her Statement of Claim filed on 14<sup>th</sup> June 2016, the Claimant seeks Judgment against her former Employer, the Respondent herein, on the following terms:-

a) 1 month salary in lieu of notice at Kshs. 39,695.

b) Service pay for 13 complete years at Kshs. 297,765.

Total...Kshs. 337,460

c) Damages for unfair termination.

d) Costs.

e) Interest.

f) Any other suitable relief.

2. She avers she was employed by the Respondent as a Social Worker in 2000. She was later promoted to Projects Director, the last position she held as of the date of termination, 11<sup>th</sup> December 2012. Her last salary was Kshs. 39,695 monthly. Termination was without notice, and the Claimant was not granted an opportunity to be heard.

3. The Respondent filed its Statement of Response in person, on 10<sup>th</sup> August 2016. Subsequently the Amended Statement of Response and

Counterclaim, was filed on 20<sup>th</sup> July 2017, through the Law Firm on record for the Respondent. It is conceded that the Claimant worked for the Respondent as Project Director. She ran down the Respondent, a fact confirmed through an Audit Report dated 19<sup>th</sup> December 2012. Kshs.179,821 was embezzled from the Respondent. The Claimant is not entitled to the remedies sought, having presided over the massive looting of Respondent's finances. She was paid notice at the end of her service. She was subscribed to the N.S.S.F, and therefore not eligible for service pay. The Respondent counterclaims the amount of Kshs. 179,821 from the Claimant. The Respondent states that the Claim is time-barred, and no attempt was made by the Claimant to enlarge time. The Court is urged to disallow the Claim, with costs to the Respondent.

4. The Claimant filed Response to the Counterclaim on 1<sup>st</sup> September 2016. She denies any financial wrongdoing. All financial transactions were carried out under the close scrutiny of the Respondent. She asks the Court to dismiss the Counterclaim.

5. Hearing was scheduled by Parties' Advocates in Court, for the 8<sup>th</sup> October 2018. Scheduling took place on 14<sup>th</sup> December 2017. On 8<sup>th</sup> October 2018, only the Claimant and her Advocate attended Court. The Claimant gave evidence, and rested her case. She confirmed filing of Closing Submissions on 6<sup>th</sup> December 2018. It is also confirmed, through an Affidavit of a Court-Process Server, that the Claimant served Submissions upon the Respondent's Advocates. There was nothing filed by the Respondent by way of Submissions.

6. The Claimant reiterated in her oral evidence, the contents of her Pleadings and Witness Statement. She also adopted as exhibits, a letter of promotion; pay slip for September 2012; letter of termination; and a certificate of service, which is characterized as '*recommendation for good service.*' She denied receiving notice pay. She was only paid Kshs. 2,000. She was told by Respondent's Chairman that she would be recalled. She waited to no avail. She pleads with the Court to allow her Claim.

**The Court Finds:-**

7. The Claimant states in her Pleadings that her contract was unfairly terminated by the Respondent, on 11<sup>th</sup> December 2012.

8. She filed the Claim on 14<sup>th</sup> June 2016. This is 3 ½ years after termination.

9. It is therefore correct, as pleaded by the Respondent, that the Claim was filed outside the limitation period of 3 years, given under Section 90 of the Employment Act 2007.

10. The Court does not have temporal jurisdiction, to hear and determine this Claim.

IT IS ORDERED:-

***a) The Claim is rejected under Section 90 of the Employment Act 2007.***

***b) No order on the costs.***

**Dated and delivered at Mombasa this 15<sup>th</sup> day of March 2019.**

**James Rika**

**Judge**