



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

(Before Hon. Lady Justice Maureen Onyango)

CAUSE NO. 272 OF 2016

EMILY ATIENO OPIYO.....CLAIMANT

VERSUS

UAP INSURANCE COMPANY LIMITED.....RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 273 OF 2016

DENNIS MORARA AYUB.....CLAIMANT

VERSUS

UAP INSURANCE COMPANY LIMITED.....RESPONDENT

JUDGMENT

This judgment relates to two different suits filed by EMILY ATIENO OPIYO and DENNIS MORARA AYUB against the respondent. The cases were heard together as the two arise from the same incident.

Claim of EMILY ATIENO OPIYO (EMILY)

The claim by EMILY (who for the purposes of this judgment will be referred to as the 1st claimant) which is undated was filed on 15th September 2016. In the memorandum of claim, she avers that she was employed by the respondent, a limited liability company incorporated in Kenya and carrying on the business of insurance services, in the year 2008. She was however confirmed on 25th January 2010 as Branch Administrative Assistant and Customer Service Assistant in the respondent's Kisumu, Branch Office. She avers that she served the respondent with loyalty and diligence until 26th August 2016 when vide letter dated 26th August 2016 she was invited to attend a disciplinary hearing on 18th September 2016. The allegations against her were that she acted contrary to company's credit policy. Since the letter was vague on the charges against her, she sought further particulars by email dated 30th August 2016 which she avers the respondent ignored to respond to. At the disciplinary hearing it emerged that the charges against her related to inconsistent and dishonest discharge of her duties, that the accusations did not fall within her duties and she was thus handicapped and unable to defend herself appropriately as she had been ambushed.

The claimant avers that after the disciplinary hearing she was called back and informed verbally that she had been dismissed. She avers that upon reading the minutes of the disciplinary hearing handed to her after the disciplinary hearing, she realised that the same were greatly altered and declined to sign the minutes.

It is the claimant's case that the termination was unlawful, unjustifiable and in brazen breach of Article 41 of the Constitution. She further avers that the respondent failed to pay her legitimate terminal dues. At the time of dismissal her salary was Shs.88,078.32. She prays for the following reliefs –

a) A declaration that the termination of the claimant by the respondent was unfair for failing to comply with the mandatory provisions of the employment Act 2007 and the Constitution of Kenya 2010.

b) Judgment be entered to the claimant as tabulated below –

i) Pay in lieu of notice-----Kshs.88,078.32

ii) Damages for wrongful dismissal

Kshs.88,073.32 x 12-----Kshs.1,056,939.84

iii) Accord unpaid house allowance

at 15% per month-----Kshs.1,274,016.80

Total **2,519,034.96**

c) Costs of this suit.

d) Interest on (a) and (b) above.

CLAIM OF DENNIS MURARA AYUB (DENNIS)

The claim for DENNIS who for purposes of this judgment will be referred to as the 2nd claimant, is that he was engaged by the respondent in 2007 and confirmed in 2008 as an Office Assistant in its Branch office in Kisumu.

That he served the respondent with loyalty and diligence until 26th August 2016 when like EMILY, he received a letter inviting him for disciplinary hearing on 1st September 2016. He too sent an email to the respondent on 30th August 2016 seeking particulars of the charges against him for which he did not receive any response. At the hearing, he learnt that the charges against him were that he altered terms of a policy. He avers that this was not true as the relevant policy had been in place from 28th November 2014.

The claimant attended the disciplinary hearing on 1st September 2016 as required by the letter of 26th August 2016. The following day he was issued with a copy of the minutes of the disciplinary hearing, which he declined to sign as in his opinion they had been altered and did not accurately reflect the questions put to him and his response.

Dennis contends that the dismissal was unlawful. He prays for the following remedies –

a) A declaration that the termination of the claimant by the respondent was unfair for failing to comply with the mandatory provisions of the employment Act 2007 and the Constitution of Kenya 2010.

b) Judgment be entered to the claimant as tabulated below –

i)-- Pay in lieu of notice-----Kshs.50,488

ii)- Damages for wrongful dismissal Kshs.50,388 x 12-----Kshs.604,656

iii) Accord unpaid house allowance

at 15% per month-----Kshs.786,052.80

Total **1,441,096.80**

c) Costs of this suit.

d) Interest on (a) and (b) above.

The respondent filed responses to both claims on 24th October 2016. It confirmed employing both claimants. The respondent however denies the averments that the dismissal of the claimants was unlawful or unfair, or that it failed to respond to their emails of 30th August 2016 or that it altered the minutes of the disciplinary hearing.

Respondent's Defence

It is the respondent's case that the Respondent issued Policy No.030/040/1/004370/214 to Gulf Energy Supplies, and the policy premiums were never paid for 11 months.

That the aforesaid policy was issued on 21st February 2014, by Samuel Mandila listed as the Agent who submitted the business to the Respondent. That on 9th December 14, the Respondent received a notification that the aforesaid policy had been ceded by the insured to National Bank Assurance. On an unknown date Dennis, the 2nd Claimant increased the policy limit to Kshs.57 Million from 13 Million without any authority. On 23rd February 2015, a renewal endorsement No.030/040/3/029324/2015 was raised by Dennis, Branch

Administrator Kisumu Branch, as per instruction from National Bank Assurance. However, Dennis did not note down this instruction.

That on 2nd July 2015, a cancellation notice was sent to National Bank of Kenya (NBK) Insurance Agency notifying them to remit outstanding premiums of Kshs.114,513.00 in respect of policy No.030/040/1/004370/2014 that had been outstanding since February 2015 when policy had been renewed. NBK Insurance Agency responded on 21st July 2015 that it had no such policy in their system and asked the Respondent to provide them with instruction for the cover.

That after the discovery of the policy by NBK, Amos Natwali, credit controller of the Respondent, did not instruct the underwriting department for the cancellation of the policy, and no premiums were received.

On the same date, 25th January 2016, Golf General Suppliers representative Philip Okore together with his wife visited the Respondent's Kisumu office and paid Kshs.114,513 towards Policy No.030/040/1/004370/2014 covering all outstanding premiums from date of renewal, that is February 2015 to December 2016.

On 25th January 2016, the Golf General Suppliers representative, Philip Okore, visited the Respondent's Kisumu office and paid Kshs.114,513 towards covering all outstanding premiums from date of renewal, that is February 2015 to December 2016. The arrears of the premiums were receipted by Emily. On the same date, 25th January 2016, Mr. Okore of Golf General Suppliers visited the same Kisumu Branch and was given a claim form by Dennis which he completed and then filed a fire claim in respect of the same policy to the value of Kshs.15,000,000.00, which claim was forwarded to the Respondent's head office for registration by Emily. The same claim was also forwarded by National Bank Assurance on 26th January 16 as interested parties to the property.

The Claimants did not verify that as at the time of making the claim, there as no valid policy as the premiums had not been paid for 11 months contrary to the established credit policy. The Respondent avers that the credit control policy of the Respondent, with regard to cancellation of policies and payments made after policy cancellation is as follows:-

- a) That if payments are not received within the credit period, the actual cancellation of policy will take place.
- b) The credit controller will issue the "instruction to cancel" to the SDU/Finance/underwriting.
- c) Upon cancellation, a cancellation confirmation will be raised and sent to the client, agent and business manager.
- d) If premiums are paid within one month after cancellation, the policy will be deemed to have been suspended and the policy will continue up to the expiry date (No claims are admissible during suspension periods).
- e) However, no policy can be reinstated more than one month after the cancellation is effected.

The respondent avers that it has a policy that all premiums not paid for a period of 30 days must be reported and it was the responsibility of the 2nd claimant, Dennis to make the report to the Credit Controller for cancellation of the policy and removal of the policy from the system. That the claimants allowed Policy No.030/040/1/004370/2014 to remain active in the system thereby breaching the credit control policy. Further, that the acceptance of claim form by the 2nd claimant and receipt of premiums more than a month after the removal was a fraudulent breach of the respondent's regulations with clear intention to assist the insured to defraud the respondent of Kshs.15 million.

Further that by acccepting and receiving the claim for Kshs.15 million and sending it to the respondent for registration, the claimants acted in clear and fraudulent breach of the respondent's policies and regulations with the intention of assisting the insured to defraud the respondent.

The respondent avers that it conducted investigations into the suspicious claim and interviewed the claimants in March 2016. It avers that there was valid grounds for termination of the claimants and that the 2nd claimant admitted at the disciplinary hearing that –

- i) The Claimant confirmed to the insured that the policy, for whose premiums had not be paid for 11 months, was still in force,
- ii) The Claimant gave the insured a claim form when he ought not to have done so in view of the unpaid premiums
- iii) The Claimant altered the policy cover from Kshs.32 Million to Kshs.54 million without any authority or permission
- iv) The Claimant assisted in the receipting of the payment of the premium on 25th January 16.
- v) The claim was lodged after payment of premiums in respect of a fire that had occurred the previous night.

That the 1st claimant (Emily) admitted at the disciplinary hearing that she receipted the premium on 25th January 2016 and that the claim was lodged after payment of premiums in respect of a fire that had occurred the previous night.

It is the respondent's contention that the claimants were given a fair hearing in compliance with the law and their dismissal were fair.

The respondent prays that the claims be dismissed.

Claimant's Case

CW1, DENNIS MORRA AYUB testified that he was employed by the respondent in 2007 and was confirmed 6 months later in 2008 as an Office Assistant. His duties entailed cleaning, delivery, tea making and any other duties assigned to him by the Supervisor. He confirmed receiving the letter dated 26th August 2016 inviting him for a disciplinary hearing. He asked for the charges against him by his email of 30th August but received no response. On 1st September 2016, he asked two colleagues to accompany him to the disciplinary hearing but both colleagues he approached declined saying there were no grounds. He thus appeared for the disciplinary hearing alone.

At the hearing he was questioned about the fraudulent claim which was taken out by a client by the name Philp Okore. He testified that the client had several policies. The claim at issue was a fire policy. He was asked what part he played on the claim and why he gave a claim form to the client. His response was that the form was on the website and could be accessed by any person and secondly, that he was performing his duty of customer care when dealing with the client. That he gave the client the claim form and asked the client to fill it.

Dennis testified that the disciplinary meeting adjourned after he had responded to many questions. When the meeting resumed he was asked why he increased the cover without authority. He explained that in 2010 he was asked to help in underwriting after the Underwriter KEVIN OMONDI left. That National Bank called him to increase the policy as it had an interest in the policy and the client was taking a mortgage.

He complied and increased the sum insured. That since he was not a trained underwriter he did not know whether he had authority to act on the instructions of the Bank. That as far as he was concerned he was doing his best. He testified that the cover was increased in 2014.

The claimant testified that the termination of his employment was unfair. He prayed that the court orders the respondent to pay him what was due to him.

Under cross-examination, he testified that he was aware the respondent was investigating the fire policy of Philip Okore and he had been interviewed by investigators and auditors before 26th August 2016. He stated he was doing the work of underwriter though not trained, and was conversant with the fire policy. That he was aware the policy was valid from February 2015. He however did not know that a policy stops 30 days from the date payment is due if not paid. That he altered the sum assured in the policy from Kshs.32 million to Kshs.57 million but was not aware he had no authority to alter the sum assured. He further stated that he did not report to anyone that he had renewed the policy.

He testified that Mr. Philp Okore of Gulf General Supplies went to the office on 25th January 2016 and informed him he wanted to lodge a claim on the fire policy. He was not aware when the fire had occurred and did not check if the premiums had been paid as he had no right of access in the system. That he checked the policy and confirmed it was in force, then gave Mr. Okore the claim form. He stated he was aware that a policy whose premium had not been paid is not valid. He stated he was not aware that the premiums for the said policy were paid the same day after the claim forms had been filled.

Dennis testified that he was aware investigators found out what had happened but was not aware that the letter of 26th August 2016 inviting him for a disciplinary hearing related to the fire claim. He stated he did not have a copy of his email of 30th August 2016 seeking particulars of the charges against him and was not aware whether or not it had been received by the respondent.

He stated he knew Rose Wahome of Human Resource and Milka Kinyua also of Human Resource who were in his disciplinary panel. He stated the minutes were taken by Joseph Mwai whom he was not aware was the Legal Officer.

Dennis admitted that at the disciplinary hearing he was asked if he was aware why he was at the meeting, if he was aware of his right to call a witness, if the claim was about Gulf claim, and he answered in the affirmative to all the questions. That he was thereafter taken through the steps of what had happened and he stated he checked the policy and confirmed it was in place.

That in his dismissal letter the reasons for dismissal were given as negligence and that he was disciplined because he increased the cover without authority and/or instructions. He admitted that he increased the limit of the cover without authority. He however testified that he denied commencing the claim process while the premium was outstanding.

Denis testified that he did not ask Emily about the premium because she was not in the office. He also did not call Nairobi as he knew that after the claim form was filled the company would assess the risk and determine whether or not to pay.

He testified that after he was dismissed he opened his own Insurance Agency. That he was paid one month's salary and part of the pension after he was dismissed on 1st September 2016.

CW2 EMILY ATIENO OPIYO testified that she was employed by the respondent in October 2008 and confirmed on 25th January 2010. She received the letter dated August 2016 inviting her for a disciplinary hearing on 1st September 2018. That she did not understand the contents of the letter because it referred to actions contrary to credit policy.

She testified that as Branch Administrative Assistant her duties were to handle general office queries, administration, receipting and banking. After getting the letter of 26th August 2016 she sent an email seeking details of the case in question to enable her prepare adequately for the hearing but did not receive a response to her email which she had sent through the office system.

She testified that she was not able to get a colleague to accompany her to the disciplinary hearing because she did not know the charges against her. At the hearing the Human Resource Manager introduced the panel and asked her if she knew about Gulf Policy. That what came out at the hearing was about the policy and she felt like it was an ambush. That she did not know how to defend herself. She testified in

respect to the Gulf claim that the client paid the premium and she receipted it.

She testified she declined to sign the minutes of the disciplinary hearing because she felt the minutes did not reflect what transpired at the meeting.

She testified that her salary was Kshs.88,018.32 and that she was not paid house allowance.

She testified that the termination of her employment was unfair because Dennis and herself were not notified in advance about the charges of colluding with the client and further because she had not been given a warning. She prayed for judgment as prayed in her claim.

Under cross examination the claimant stated that she knew Philip Okore of Gulf Energy who had taken out a fire policy. That the policy was issued by the underwriter. That assessment of risk is done by an underwriter. She stated that she receipted the premiums in the system as they did not do manual receipts. That the system automatically works out the premium to be receipted. She testified that the system does not indicate the validity period of the policy but only states the amount due. She stated she was not sure if the system indicates the amount owing. She further testified that she was not aware whether under UAP Credit policy premiums have to be paid within 30 days from the date of issue or renewal. She testified that she was aware the respondent had been investigating the claim and that the investigator was from Nairobi.

She testified that she went for the disciplinary hearing in Nairobi.

She testified that on 21st January 2016 when Philip Okore went to the office to make a claim she served him. That she did not check in the system and did not find out from the Supervisor if the policy was valid when she received the premium.

She stated it was her role to forward the claim forms to Nairobi but could not recall if she did so for the Gulf claim forms.

The claimant testified that she knew the panellists at the disciplinary hearing except the Legal Officer whom she met at the hearing for the first time. She further testified she had no disagreement with any of the panelists and did not know if they had any reason to falsify the minutes.

Respondent's Case

The respondent's witness JOSEPH MWAI (RW1) testified that he was the Senior Legal Officer of the respondent and knew both EMILY and DENNIS, the claimants.

He testified that the respondent received claim in respect of a fire that occurred on the night of 24th/25th January 2015. The insured was Mr. Okore of Gulf Energy. The policy was issued on 22nd February 2015 to cover the period up to 22nd February 2016, a period of one year. At the time of the fire the insured had not paid premiums for renewal of the policy. He testified that the respondent has a credit policy that premium must be paid within one month failing which there is no valid insurance.

He testified that the claim was made on 22nd January 2016 while the cover duration was valid from 22nd February 2015 to 22nd February 2016, that the claim was made a month before expiry of the policy, although the premium had not been paid until the morning on the date the claim form was filled. He testified that the claim form was filled at around 8.30 am and the premium was paid around 11 am on the same day. The premium was received by Emily and she is also the one who reived the claim form as Dennis was out to see a client, Great Lakes University. The premium paid was Kshs.114,513. He testified that the premium was in this case received 11 months late, yet the cover lapses one month after the cover is initiated.

RW1 testified that Emily's responsibility was first to check if there was an existing policy, that step two was for her to confirm whether the premium had been paid. That it was only after these two steps had been fulfilled that the claim form should have been accepted. That in this case the claim form was filled before the premium payment was made, thus subverting the system.

RW1 testified that the claim was forwarded to Nairobi, registered in the normal way and was processed. That while the officer dealing with the claim was processing it he noticed the anomaly and reported to the forensic team. Investigations were thereafter carried out which revealed that the policy limit had been changed from the insured sum of Kshs.32 million to Kshs.57 million. The person who changed the policy limit was Dennis. He did not have authority to do so. The difference of Kshs.25 million was above the Branch Manager's limit. That such change should have been flagged as it meant the property was under-insured or additional investment was injected.

RW1 testified that the Credit Controller Peter Muchiri and Finance Officer Amos Atwoli were interviewed. Emily Opiyo, the Branch Administrator Kisumu was also interviewed concerning the change of policy. That is when it was discovered that it was Denis who changed the Policy without authorisation.

The investigations pointed to an intent to defraud the respondent.

He testified that disciplinary proceedings were then initiated against Emily and Denis. They were invited for disciplinary hearing and were informed of the charges against them. They were also informed of the right to have a colleague as a witness in the letter inviting them for hearing.

RW1 testified that both claimants attended the disciplinary hearing at Garden Towers, Nairobi, the respondent's Head Office. RW1 was present at the disciplinary hearing as Legal Adviser and he recorded the minutes.

Present at the meeting were the Group Underwriting Manager, Claims Manager, Manager in Charge of Branches, Head of Finance, Human Resources Manager and TW1.

After the hearings the committee made a decision to dismiss both claimants and the decision was communicated to them. They were also issued with a copy of the minutes. Both claimants refused to sign the minutes.

Upon dismissal both claimants were paid pending leave days, pension and salary up to date of dismissal.

Under cross examination RW1 stated that at the time of engagement the claimants were issued with employment contract, HR Manual, standard Operating Procedures (SOPs) Form for IT Rights, Medical letter and stand for NHIF and NSSF and Handbook. He testified that there was no complaint against any of the claimants before the termination.

RW1 conceded that the letter inviting the claimants for disciplinary hearing did not explain what aspect of the credit policy they were required to explain. He further conceded that Emily, and not Dennis, sent an email to Human Resource Office seeking further details of the case but the email was not responded to. He stated it was possible for her to adequately defend herself without the particulars she had sought.

He stated he had no evidence that Dennis had been trained on underwriting claims and that Dennis had grown through the ranks. He stated the policy was altered during renewal in 2014 and the customer paid the premium.

He testified Emily was implicated for receiving the premium while Dennis was implicated for changing policy insured sum.

Determination

I have considered the pleadings, evidence and submissions. The issues for determination are whether the termination of the employment of the claimants was fair and if they are entitled to the remedies sought.

Fair Procedure

Fair procedure is provided for in Section 41 of the Employment Act which provides as follows –

41. Notification and hearing before termination on grounds of misconduct

(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

In the instant case, the claimants who worked at the respondents Kisumu Branch Office were first interviewed during investigations. They were then called to attend disciplinary hearing in Nairobi by letters dated 26th August 2016.

Emily sought particulars of the charges against her which were not supplied. She nonetheless attended the hearing on 1st September 2016.

RW1 conceded that the letter inviting the claimants to the disciplinary hearing did not indicate what aspect of the credit policy they were to explain at the disciplinary hearing, but was of the view that she, was even without those particulars, able to explain the issues raised at the disciplinary hearing.

Both Emily and Dennis refused to sign the minutes, alleging that they did not reflect accurately what transpired at the meeting.

Emily specifically stated she was misquoted in her response to the question whether she was aware about the claim, which she stated she did not but was recorded that she was aware, that it was further recorded that she waived her right to be accompanied when the correct position was that she could not get a colleague to accompany her as she was not aware of the charges against her.

Denis also refused to sign to minutes claiming they were inaccurate.

I have gone through the minutes of the disciplinary hearing. I have further gone through the letter inviting the claimants for disciplinary hearing which states the hearing is to present them with an opportunity to present their case regarding “*actions which were contrary to the company credit policy.*”

I find that the notification for the hearing did not meet the requirements of Section 41 of the Employment Act which require that “**an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering**

termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.” [Emphasis mine]

The letter inviting the claimants to the disciplinary hearing did not explain the charges against them. The claimants were not adequately informed of the charges they were to respond to at the disciplinary hearing thus compromising their right to a fair hearing as set out in Section 41(1) of the Act.

On validity of reasons, Emily was terminated for accepting receipt of the

policy premiums after the insurance cover had lapsed. According to Emily, the cover was still active in the system when she received the cash.

Her position is supported by the investigation report which states “*the policy remained active on the system as it was not cancelled*”. Further that “*Amos Natwoli did not send instructions to underwriting for cancellation of the policy*”.

At paragraph 4.1 of the report it is observed that -

“Detailed Investigation Findings

4.1 Gulf General Suppliers Policy Portfolio

GFS reviewed the client’s portfolio and noted that the following policies had been issued to Gulf General Supplies during 2015:

<i>Policy No.</i>	<i>Status</i>	<i>Date of Cancellation</i>	<i>Reason of Cancellation</i>
<i>03006410058982015</i>	<i>cancelled</i>	<i>11/11/2015</i>	<i>Non payment</i>
<i>0300801006642015</i>	<i>cancelled</i>	<i>14/10/2015</i>	<i>Non payment</i>
<i>03008710088232015</i>	<i>cancelled</i>	<i>14/10/2015</i>	<i>Non payment</i>
<i>03004010043702014</i>	<i>active</i>	<i>active</i>	<i>Non payment</i>

GFS established that three of the four policies had been cancelled due to non-payment of premiums.

However, Policy no. 030/040/1/004370/2014 had not been cancelled despite the premiums not been paid for a period of 11 months.”

The report concluded that –

“Recommendations

GFS recommends that Management considers the following:

1. Consider taking the appropriate action (IR or otherwise) against Mr Amos Natwoli, Credit Controller, for failure to cancel policy 030/040/1/004370/2014 after having observed that the premiums were not paid for a period in excess of 30 days, thereby breaching the Credit Control Policy.

2. Legal Recourse

Management should consider engaging Group Legal concerning UAP’s liability to honour the clients’ claim, considering all the circumstances.”

The report did not find any fault with Emily or Dennis but with the respondent’s Credit Controller who had failed to cancel the policy hence making it available in the system to receive premiums, which is what Emily did. I therefore find that Emily was not to blame for receipting cash on a policy that was still active in the system. There was thus no valid reason to terminate her employment.

As for Dennis, he was accused of increasing the policy cover limit from Kshs.32 million to Kshs.57 million without authority. It is evident from the record that this increase was effected on 14th December 2014, more than one year before the claim was made. The respondent had received the premium from the enhanced policy without raising any issues. The increase in the policy had nothing to do with what the respondents accused the claimants for. The letter inviting the claimant for hearing required him to explain the credit policy without

specifying what aspects of the credit policy. It has not shown that increasing the policy limit was part of the credit policy.

Further, RW1 conceded that Dennis was carrying out underwriting work with the knowledge and approval of the respondent as he had learned on the job. Dennis testified that he was not aware that he was required to seek authorisation to increase cover limit or that he was supposed to inform the Head Office about the increase. It further transpired during the hearing that the system automatically calculated the premium payable. This means that the increase of the cover limit should have been picked up at the Head Office by either the Group Finance Manager or Credit Controller who monitored the premiums payable.

Blaming the claimant who had brought in more business to the company because something went wrong after the fact was directing the blame at the wrong party.

From the foregoing, I find that the claimants were unfairly terminated both procedurally and substantively. I therefore find and declare the termination of their employment unfair.

Remedies

The claimants prayed for pay in lieu of notice, compensation and accrued house allowance. Having found their dismissal unfair, both claimants are entitled to notice. They are also entitled to compensation, which I assess at 8 months' salary for each of them taking into account the manner in which their employment was terminated, the length of service and the other factors as set out under Section 49(4) of the Employment Act.

On the prayer for house allowance, the respondents Human Resource Policies and Procedural Manual does not make any reference to house allowance and neither do the claimant's letters of confirmation. The payslips of the claimants refer to basic pay as the same as gross pay. The claimants have not proved that their salaries were not consolidated. They have further not demonstrated that for the years they worked non-payment of house allowance was ever an issue.

The Employment Act allows employers to pay either a basic pay with house allowance or to provide housing, or to pay a consolidated wage inclusive of house allowance.

I find that the claimants have not proved to the court that their salaries were not consolidated. The claim for house allowance must therefore fail.

In conclusion therefore I award the claimants the following –

Emily Atieno Opiyo

NoticeKshs.88,078.32

Compensation (8 months' salary)Kshs.704,626.60

Total **Kshs.793,704.80**

Denis Morara Ayub

NoticeKshs.50,488

Compensation (8 months' salary).....Kshs.403,904

Total **Kshs.454,392**

The respondent shall pay costs to the claimants.

The decretal sum shall attract interest from date of judgment.

DATED AND SIGNED AT NAIROBI ON THIS 30TH DAY OF APRIL 2019

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 20TH DAY OF MAY 2019

MATHEWS NDERI NDUMA

JUDGE