



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 844 OF 2018

EDWARD NGAREGA GACHERU.....CLAIMANT

- VERSUS -

NATION MEDIA GROUP LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 21st June, 2019)

JUDGMENT

The claimant signed a contract with the respondent on 10.04.2013 accepting the respondent's offer conveyed by the letter dated 15.03.2013. The employment was effective 02.05.2013 and the terms were as follows:

- a) The claimant was employed as a freelance Business Executive charged with selling advertising space for the respondent's newspaper division.
- b) The claimant was to report to the respondent's Business Manager, Advertising Department for the claimant to liaise in planning and executing his duties effectively.
- c) The claimant was to earn a retainer of Kshs.40, 000.00 per month or a commission (whichever was greater) in the next 3 months of initial training. After the training the claimant would be paid a commission as per the current commission scheme.
- d) The claimant was to report on duty at 8.00am up to 5.00pm every working day and maintain a high degree of discipline and good conduct. He could be called upon to work extra hours.
- e) The claimant was to be appraised against his monthly target which he was expected to achieve regularly with his good planning and aggressive selling.
- f) The letter stated, **"You will work as an Independent Contractor but will be entitled to access the premises of the Company for the purposes of performing your obligations. However, such access will be subject to the Company's discretion and while you are in the premises, you will be required to comply with Regulations, Policies and directives applicable to all persons within the Company Premises."**
- g) You will be expected to take good care of any of the Company's Equipment in the process of use while within the premises and you may be surcharged for damage or loss to any of the Company's equipment which may be made available to the claimant to enable him perform his obligations.
- h) The contract then stated, **"This is not a letter of offer for employment with the Nation Media Group Limited."** And further stated, **"As an independent Contractor, you will not be entitled to an Office or specific sitting space within the Company's premises. However, the Company may in its discretion permit you to use its furniture or a work-station or desk or its other office equipment solely for the purpose of your functions within the Company's premises to be shared with other Business Executives."**
- i) The contract further stated thus, **"You or the Company may terminate this arrangement by giving 24 hours written notice. However, the Company shall be entitled to terminate the arrangement immediately in the event of breach by yourself of any of your obligations under this letter."**
- j) The letter stated that the claimant's performance would be evaluated three months after joining the respondent to determine the continuity of his services.

k) The letter was signed for the respondent by Veronica Chirchir, the Human Resource Manager and the claimant signed on 10.04.2013.

The claimant's evidence is that he commenced duty on 02.05.2013 on a monthly retainer of Kshs.40, 000.00 which was paid for initial 2 months and beginning the 3rd month he was paid commissions at the prevailing commission rates. The exhibited proposed advertising commission scheme effective February 2013 being exhibit C2 shows the rates for Freelance Sales Executives on the one hand and on the other, Permanent Sales Executives in the Head Office and then in the Branches respectively.

The claimant's evidence was that upon embarking on the assignment, he was assigned a supervisor known as Kiilu, a desk and setting position, official email address engarega@ke.nationmedia.com, staff identity badge, Classspeed system login, telephone calling code, filled employment data collection form and it was his case he was fully integrated as an employee. It was his case and evidence that colleagues he had joined with and undertook the training together but categorised as Permanent Sales Executives who carried out similar duties (of selling advertising spaces) as the claimant were offered better salary and commission and he was left out and discriminated against in that regard. His evidence was that he reported on duty at 8.00am to 5.00pm and sometimes worked overtime. Thus, the claimant testified that he was under the respondent's complete control in terms of working hours, place, appraisal, reporting and paid commissions just like permanent staff but he was without a salary because he was designated a Freelance Sales Executive. Further, the claimant testified that he was deducted PAYE remitted to Kenya Revenue Authority (KRA) and so he considered that he had been enlisted as an employee and not an independent contractor and in which event, withholding tax at 5% would apply and not the PAYE of about 24%. He submitted annual KRA returns on prescribed KRA form P9 as an employee instead of being subjected to withholding tax of 5% with monthly returns.

The contract between the parties was terminated by the letter dated 26.01.2018 addressed to the claimant as follows:

“Dear Edward,

RE: TERMINATION OF EMPLOYMENT

We refer to your letter of appointment as a freelance Business Executive for the Company.

This is to give you notice of 15 days that the company intends to terminate the Agreement.

The notice shall take effect on the date of this letter and shall expire on 9th February, 2018.

You will be paid your commissions earned for the work done up to 9th February, 2018 but will also be required to off set any liabilities owed to the company as you pursue your clearance.

On behalf of the management of Nation Media Group Limited, I thank you for your contribution to NMG and wish you every success in your future endeavours.

Signed

Michael Ngugi

Group Advertising Director”

The claimant completed the staff clearance certificate showing his staff no. 2715, his department was advertising, and his last day at work was 09.02.2018. He was given a certificate of service showing he was engaged on 02.05.2013 and he had left on 09.02.2018. The claimant has filed some of his pay slips showing he was on the respondent's payroll, no pension arrangement, and of NSSF and PAYE was deducted. The payslip also has employee name and employee code.

The claimant was dissatisfied with his terms of service and he filed a memorandum of claim on 06.06.2018 through Ongicho-Ongicho & Company Advocates. The claimant prayed for judgment against the respondent for:

- 1) Declaration that the respondent's Appointment letter dated 15th March 2013 for the position of freelance business executive or independent contractor be deemed as permanent staff.
- 2) Declaration that the respondent's termination of agreement letter dated 26.01.2018 is action terminating the services of the claimant from its employment as unlawful and hence null and void.
- 3) The respondent be ordered to reinstate the employee and treat him in all respects as if the claimant's employment had not been terminated, OR
- 4) The respondent re-engage the employee in work comparable to that in which the claimant's was employed prior to his dismissal, or other reasonably suitable work, at the same wage.

In the alternative of reinstatement of the claimant, he prayed for payment as follows:

1) Terminal dues as enumerated under paragraph 27 above being:

- a) Withheld salary or wage from 2013 to February 2018 at 65, 000.00 X 57 months Kshs. 3, 705, 000.00.
- b) Reasonable notice 2 months (90,000.00x2) Kshs. 180, 000.00.
- c) Travel allowance (fuel) from 2013 Kshs. 25, 000.00 x 57 = Kshs.1, 425, 000.00.
- d) Compensation for unfair termination 90,000.00 x 12 months = Kshs.1, 080, 000.00.
- e) Unutilised leave days 120 days Kshs. 624, 000.00.
- f) Service pay for 5 years x 15/30 days x 90, 000.00 = Kshs.225, 000.00.
- g) Tax Refund Kshs. 1, 441, 580.00.
- h) Compensation for discrimination at work place Kshs. 10, 000, 000.00.
- i) Withheld commission earned Kshs.2, 217, 312.00.
- j) Commissions to be earned on unpaid contracts-collections Kshs. 383, 950.00.
- k) Confirmed mid-year contracts works, Kshs.2, 000, 000.00.
- l) Total Kshs. 23, 281, 842.00.

2) Interest on paragraph 27(i) – (ix) at court rates from the date of filing the suit until payment in full.

3) Any other relief the Honourable Court may deem fit to grant in the circumstances.

4) The respondent be ordered to pay legal costs in the suit.

The claimant further pleaded as follows:

- 1) The claimant was discriminated against as permanent staff was accorded various privileges and benefits which he was denied by virtue of unfair application of working conditions or terms. The permanent staff enjoyed inter alia the following, interest free car loan, mileage allowance, insurance cover, medical cover, reimbursement of expenses, pension scheme, commissions and salary.
- 2) That the result of the appointment letter was that the respondent stopped paying the claimant salary from 31.07.2013 until termination on the 26.01.2018 hence the claim for withheld salaries.
- 3) If he was a consultant then withholding tax and not PAYE was due hence claim for excess tax.
- 4) The claimant concluded various deals with execution dates after 26.01.2018 after contract had been terminated and he claimed the future commissions payable to him.
- 5) The respondent unilaterally changed the terms of the commission scheme which was effective from 22.02.2013 without consulting the claimant. The changes introduced penalties on delayed earnings payments or collection period from 60 days to 30 days and materially changed accounting dates to monthly. Thus the claim for withheld commissions.
- 6) The claimant had concluded mid-year contracts worth Kshs.2, 000, 000.00 with various businesses and same captured in the respondent's system and the claimant prayed that the respondent honours the commissions.
- 7) The claimant urged that he was in a contract of employment entitled to accumulated 120 leave days, pay in lieu of notice, reasons for termination, and due procedure in termination.

The respondent's replying memorandum was filed on 09.07.2016 through Iseme Kamau & Maema Advocates. The respondent prayed for the claimant's claim to be dismissed with costs. The respondent's case was as follows:

- 1) The claimant was engaged as an independent contractor per the letter of 15.03.2013. That the letter was express that the relationship between parties was not employment but it was of independent contractor. The terms in the letter were not exploitative or discriminatory and for first three months the claimant had been put on a retainer of Kshs.40, 000.00 per month. The contract was voluntary and parties are bound accordingly.
- 2) The claimant was not subject to control and supervision of the respondent and he was not required to exclusively work for the respondent. He was free to work from any station of his choice provided he met his sales and collections targets. He was not required

to report on duty from 8.00am to 5.00pm and at the respondent's offices.

3) The respondent denied that the claimant's work was substantially similar to that of permanent staff because of the following reasons:

a) As an independent contractor the claimant was required to come up with his own pipeline of customers or clients to purchase advertising space on the respondent's newspapers being Daily Nation (DN), Business Daily (BD), the East African (TEA), and Taifa Leo(TL). The permanent staff on the other hand only dealt with customers who were already in the respondent's portfolio and were not required to establish new clients or customers.

b) The respondent was not directly supervised and controlled by the respondent as was the case for permanent employees. He reported to Business Manager not for supervision but for aligning strategy.

c) The claimant could bring as many clients as he wished and could push his sales both from existing and new clients or customers and as a freelance sales executive he enjoyed preferential commissions than the respondent's permanent staff.

d) Staff appraisal, official email, staff identity card, and being subjected to training did not amount to integration as an employee. The claimant's performance was simply measured against targets like was done for permanent staff as a basis of appraisal and payment of commissions.

e) The claimant enjoyed better commission rates than rates for permanent staff. There were also additional rates to be paid (and not payable to permanent staff) if the claimant met prescribed percentages of sales targets.

f) PAYE was payable under Income Tax Act and under section 35(3) as read with 3rd schedule to the Act, for an independent contractor such as the claimant the respondent was required to withhold 5% tax with respect to payments made to the claimant. Such tax was not final and 30 % income tax (PAYE) was deducted as a convenience to the claimant who was anyway required to make the income tax. Thus payment of income tax did not convert the relationship to contract of service.

g) The claimant was not entitled to other benefits which would be available in a contract of service such as leave, insurance cover, transport, company car and transport allowance. He was not an employee. The permanent staff had fixed salary but claimant earned variable commissions at preferential rates.

4) The claimant was entitled to commissions as per agreement and not to salaries as claimed.

5) The termination was not unfair. It was as per the agreement and instead of contractual 24 hours the claimant was given 15 days' termination notice.

6) All commissions earned as at 09.02.2018 were paid. Mid-year contracts worth Kshs. 2 Million were denied.

7) The letter by KRA to the respondent dated 20.11.2008 confirmed that permanent sales executives and freelance sales executives were subject to tax deduction because they were both falling under "**contract of service**".

The respondent's witness (RW) was Sekou Owino, the respondent's Head of Legal and Training.

The Court has considered the pleadings, the evidence, and the parties' respective submissions.

The 1st issue is whether the parties were in a contract of service or consultancy or independent contract relationship also known as a contract for service. This court considered the issue in the case of **Stanley Mungai Muchai – versus- National Oil Corporation of Kenya, Industrial Court of Kenya at Nairobi Cause No. 447N of 2009 pages 7 to 9** of the court judgment where it was stated, thus:

"The Industrial Court Act, 2011 in Section 2 defines employee to mean a person employed for wages or a salary and includes an apprentice and indentured learner. The section also defines employer to mean any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.

The Employment Act, 2007 in Section 2 defines "Contract of Service" to mean an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of the Act applies.

The court holds that whether the relationship between parties' amounts to a contract of service or contract for service is an issue both of law and fact but largely, one of fact. There is no doubt that a relationship that is a contract of service, unlike one that is a contract for service, will enjoy the statutory protections accorded by the employment legislation. This is more so in view of the definitions of "employee", "employer" and "contract of service" under the Employment Act, 2007 and the Industrial Court Act, 2011.

A contract of service invariably relates to "dependent" or "subordinate" employment and a contract for service relates to "independent" or "autonomous" employment. Thus, there is a constant line that is drawn between self-employed or

independent contractors in a contract for service, and, employees in a contract of service. There is no universal formula for determining existence of a contract of service. *Simon Deakin and Gillian S. Morris, Labour Law, 3rd Edition* pages 146 to 168 have discussed some of the tests used by courts in determining “employment” or “service”. They include the following:

(a) **The control test whereby a servant is a person who is subject to the command of the master as to the manner in which he or she shall do the work. However the formal or personal subordination of a worker as a test for existence of a contract of service may not apply for highly specialized workers such as in the case of the doctors, lawyers, and other professionals.**

(b) **The integration test in which the worker is subjected to the rules and procedures of the employer rather than personal command. The employee is part of the business and his or her work is primarily part of the business. However, staff of independent contractors may as well perform entries integral or primarily part of the business when in fact, they are not employees.**

(c) **The test of economic or business reality which takes into account whether the worker is in business on his or her own account, as an entrepreneur, or works for another person, the employer, who takes the ultimate risk of loss or chance of profit.**

(d) **Mutuality of obligation in which the parties make commitments to maintain the employment relationship over a period of time. That a contract of service entails service in return for wages, and, secondly, mutual promises for future performance. The arrangement creates a sense of stability between the parties. The challenge is that where there is absence of mutual promises for stable future performance, the worker thereby ceases to be classified as an employee as may be the case for casual workers.**

Since none of the foregoing tests can resolve the issue decisively on their own, in many cases the issue will be resolved by examining the whole of the various elements which constitute the relationship between the parties; this has been called the multiple test”.

In the present case, the Court sees no difficulty in finding that the parties were in a contract of service. First the letter by KRA to the respondent dated 20.11.2008 confirmed that permanent sales executives and freelance sales executives were subject to tax deduction because they were both falling under “**contract of service**”. The respondent then acted upon that letter and deducted and remitted the PAYE with respect to its freelance sales executives like the claimant. The respondent has pleaded and confirmed that if the claimant had been a consultant, then under section 35(3) as read with the 3rd schedule of the Income Tax Act, the legitimate action would be to recover 5% withholding tax. The evidence was that PAYE and not 5% withholding tax was deducted from the claimant’s pay. Second, the evidence is that the claimant was provided the facilities to work such as official email, work station at the respondent’s office, was subject to the respondent’s workplace regulation and was subjected to internal appraisals. Obviously he did not work for himself but for the respondent – he was not a consultant. Third, the claimant was subjected to procedures and practices consistent to a contract of service – he had a staff number, he was on the payroll, he was appraised, he was on respondent’s payroll, his working hours were regulated and terminologies such as staff, employee and certificate of service as well as a notice of termination were invoked. It was clearly employer-employee relationship. The claimant was subject to the respondent’s control, he was integrated in the respondent’s service, and he did not work for himself but clearly for the respondent.

The Court follows **Ivor Niselow –Versus Liberty Life Association of Africa Limited [1998]ZASCA 42** cited for the respondent thus, “**....an employee is a person who makes over his or her capacity to produce to another; an independent contractor, by contrast, is a person whose commitment is to the production of a given result by his or her labour.**”

The Court further returns that payment by way of a commission was merely an agreed mode of remuneration and in such circumstances, pay by way of commission did not defeat the existence of a contract of service in any manner.

The Court holds that by the contract stating that parties were in consultancy or independent contracting and expressly stating that it was not a contract of service or employment relationship, the employer – employee relationship was not thereby extinguished or waived. The existence of a contract of employment is a matter of fact as it is a matter of law and once the salient features of the relationship are established, it is irrelevant that parties expressly or impliedly agree to the contrary. Parties are at liberty to agree upon such terms and conditions of their relationship and not meaning the law puts to the nature of the accruing relationship unless the law allowed them to vary the prescriptions or such meaning given in the law – so that parties cannot agree and contract beyond matters within their freedom to contract such as the meanings prescribed by law. The Court will therefore look at all the circumstances of the contract, its implementation, and the conduct of parties to give the lawful meaning to the intentions and nature of the emerging relationships between parties to the contract. While making that finding the Court reckons that it is for the employer under the Employment Act, 2007 to draft or draw the contract and the employees will not be faulted in signing contracts which are carefully designed by employers to defeat the employees’ minimum protections and safeguards under the Act. Contracts of service which are expressly camouflaged as not being such contracts (like in the instant case) will be smoked out as inconsequential to the extent that they are rectified and the minimum terms of service in the Employment Act, 2007 are applied as appropriate.

The 2nd issue for determination is whether the claimant was discriminated or unfairly treated. The Court finds that the parties were clear that the claimant would serve as a freelance sales executive. The respondent by evidence has shown that it concurrently operated a scheme of service for freelance sales executives and permanent sales executives. To that extent the claimant clearly contracted to serve as a freelance sales executive and the same being a distinct service in the respondent’s establishment, there was no basis for comparison between the two cadres. In that sense the Court returns that the claimant has not established unfair treatment or discrimination because different terms and conditions of service applied to the two cadres of sales executives. Thus the allegations of discrimination will collapse for want of a comparator.

However, the Court returns that the respondent treated the claimant unfairly and unlawfully to the extent that the contract as concluded was a

contract of service disguised expressly not to be one of service and to the extent that some minimum terms of service under the Employment Act, 2007 were not provided for, the claimant suffered unfair terms and conditions of service. The same amounted to unfair labour practices contrary to Article 41 of the constitution and section 5 of the Act.

The Court's findings follow and are in line with the claimant's submissions on provisions of the **ILO –Employment Relationship Recommendation, 2006 (No.198), Recommendation on Part II – Determination of an Employment Relationship, Recommendation No. 9** thus “9. For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and remuneration of the worker, notwithstanding how the relationship is characterised in any contract arrangement, contractual or otherwise.”

Further the Court has upheld the submission for the claimant that the determination of the existence of an employment relationship should be guided by facts and not the name or form given to it by the parties – the test is objective based on certain objective conditions being met and not on how either or both parties describe the relationship; the application of the doctrine of *primacy of facts*.

The 3rd issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- 1) The Court finds that the contractual terms and conditions between the parties apply subject to the minimum terms and conditions of service in the Employment Act, 2007.
- 2) The Court has considered the material on record. There was no evidence on possibility of the respondent having a vacancy in its establishment for the position of freelance sales executive. The Court therefore considers that reinstatement or re-engagement as prayed for would not be appropriate without evidence on practicability of the same. The submissions filed for the claimant make no specific justification for reinstatement or re-engagement. The Court declines to grant the same prayers.
- 3) Withheld salaries from 2013 to February 2018 are declined because there was no contractual or statutory basis to award.
- 4) The claimant was given 15 days' termination notice. He was paid monthly commissions. In view of section 35 of the Employment Act he is awarded **half month pay** in lieu of outstanding month's termination notice at the rate of half last commissions paid to him.
- 5) Travel allowances lack contractual or statutory basis. The same is declined.
- 6) The reading of the termination letter shows the termination was within the termination clause prescribing a notice. The Court returns that the termination was not unfair in substance or procedure and compensation for unfair termination as prayed for is declined.
- 7) The claimant served for 5 years without alternative pension arrangement. He is awarded **5 months' pay in service pay** or gratuity at the rate of the last monthly commission paid and as per minimum terms under section 35 of the Employment Act, 2007 as reasonable pay in the circumstances of the case.
- 8) The claimant is awarded **120 leave days** and to be paid the same at the rate of 120 divided by 30 days in a month multiply the last gross monthly commission paid.
- 9) The claimant prayed for refund of excess tax. The refund does not arise because the Court has returned that the parties were in a contract of service and as confirmed by the KRA, PAYE was due from the claimant's monthly pay.
- 10) The Court has found that there was no case for discrimination in the instant dispute and general damages as prayed for will fail.
- 11) As submitted for the respondent there was no evidence to support the prayers for commissions earned and not paid, commissions earned on unpaid work and mid-year contract works because the statement showing the orders placed, the invoiced amount, payments received and then the commissions payable was not exhibited to support the claims and prayers. The evidence on orders for space, the space sold and therefore the commission payable was not also provided. The claimant's submissions offer no explanations to justify the claims and prayers in that regard. Further the claimant testified that he had no evidence to showing change in the payment scheme. The prayers will fail including the claims attributable to change in the pay scheme for want of necessary evidence and relevant submissions to justify the same.
- 12) The claimant has established that while he was entitled to minimum terms and conditions of service under the Employment Act, 2007, the respondent disguised the contract to appear like it was not one of service but for service or consultancy or independent contractor. The Court has found that the respondent treated the claimant unfairly, unequally and subjected him to unfair labour practices in violation of Article 41 and section 5 of the Employment Act, 2007. By that violation the claimant suffered because he could not access the statutory minimum terms and conditions of service and he is entitled to lament that he missed on benefits such as housing or house allowance, medical cover, annual leave and others as provided under the Act. In that regard the respondent is found to be strictly liable of violating the claimant's rights under the Act and in particular violation of section 3(1) of the Act which stipulates thus, “3. (1) This Act shall apply to all employees employed by any employer under a contract of service.” The Court has also considered that Article 19 (3) (b) provides that the rights and fundamental freedoms in the Bill of Rights do not exclude other rights and fundamental freedoms not in the Bill of Rights but recognised or conferred by law except to the extent that they are inconsistent with Chapter 4 of the Constitution on the Bill of Rights. The Court holds that the rights of the employee as conferred in the Employment Act, 2007 are therefore not excluded from the Bill of Rights and are not inconsistent with the Bill of Rights especially that the statutory rights under the Act amplify Article 41 on rights in labour relations including the right to fair labour practices; the right to fair remuneration; the right to reasonable working conditions; the right to form, join or participate in the activities and programmes of a trade union; and the right to go on strike. For violation of the express statutory rights and in view of

the incorporation of such statutory rights per Article 19 (3) (b), the Court returns that the respondent's deliberate violations as established will attract compensation in terms of Article 23 (3) (e). The claimant prayed for Kshs.10, 000, 000.00 in compensation. In **Mundia Njeru Gateria –Versus- Embu County Government & 5 Others [2015]eKLR**, the Court awarded Kshs. 5, 000, 000.00 for violation of the fundamental rights and freedoms of the petitioner as protected in Articles 27(1), 28, 41(1), 47, and 50(1) of the Constitution. In **Mohamed Khamis Hemed –Versus- Almasi Beverages Limited [2019]eKLR**, the Court awarded the claimant Kshs.5, 000, 000.00 on account of violation of Articles 31, 29(f) and 41 (1) of the Constitution. The Court has considered that the instant violations were with respect to largely the rights conferred in the Employment Act, 2007. The Court has also considered that some of the violations have been remedied by way of filling in the gaps of the contract as already awarded in this judgment. The Court has also considered that despite the filling of the gaps as awarded the claimant was nevertheless seriously prejudiced when his contract of service was disguised as a consultancy and his minimum entitlements such as medical care, housing, due processes in a contract of service and other entitlements were denied completely. The Court considers that an award of **Kshs. 2, 500, 000.00** in compensation will serve ends of justice in the instant case. While making that award the Court reckons that employers such as the respondent are entitled to have different establishment of cadres in their establishment (like the freelance sales executive and permanent sales executives in the present case) with distinctive roles and terms of service but without violating the statutory minimum terms and conditions of service under the Employment Act, 2007. Further the Court considers that where an employer desires to contract out or engage in a contract for service or consultancy or independent contracting, that should be clear and obvious contracts of service ought not to be deliberately disguised as independent contracting like was done in the instant case.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) The declaration that parties were in a contract of service governed by the terms and conditions in the letter of appointment dated 15.03.2013 and any deficiencies in the letter supplemented with the minimum terms and conditions of service under the Employment Act, 2007.
- 2) The respondent to pay the claimant:
 - a) **Kshs. 2, 500, 000.00** in compensation;
 - b) **half month pay** in lieu of outstanding month's termination notice at the rate of half last full monthly commissions paid to the claimant;
 - c) **5 months' pay in service pay** or gratuity at the rate of the last full monthly commission paid to the claimant; and
 - d) **120 leave days** and to be paid the same at the rate of 120 divided by 30 days of a month multiply the last gross full monthly commission paid to the claimant.
- 3) The claimant to compute, file and serve the amount in 2 above within 7 days for recording quantum on appropriate mention date.
- 4) The respondent to pay the amount in 2 above by 01.08.2019 failing interest to be payable thereon at Court rates from the date of filing the suit.
- 5) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 21st June, 2019.

BYRAM ONGAYA

JUDGE