REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.2361 OF 2016

HEINS PETER MEYER.....CLAIMANT

VERSUS

EAST AFRICAN PACKAGING INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT

1. The claimant is a male adult and the respondent a limited liability company with registered offices in Nairobi.

2. In May, 2014 the claimant was recruited by the respondent under a Consultancy contract to act as Consultant to the respondent's Operations Director for a period of 3 months. The claimant worked diligently and due to exceptional performance, his contract was extended for 3 more months.

3. The claimant being a German citizen was by then operating on a temporary work permit. The claimant worked hard and the respondent decided to employ him on a permanent basis as the Operations Director.

4. For the period of January to May, 2015 the claimant went back to his home country Germany as he waited for the processing of his work permit. By then the claimant had executed his employment contract with the respondent commencing 5th January, 2015 and valid until 17th December, 2017.

5. Under the contract of service the claimant was to be paid a salary of Kshs.1, 120,000.00 among other allowances. The claimant was also to participate in an incentive scheme which enabled him to enhance his salary by 20%.

6. In June, 2015 the claimant commenced his duties upon work permit approval. With diligence and commitment to duty, the claimant undertook his duties which led to increased sales and profits and his gross pay rose to Kshs.1, 438,885.00 per month.

7. In august, 2015 the respondent employed a managing Director Mr Nik Barnes. The new employee felt threatened by the claimant's good work and started frustrating him to ensure he was dismissed. Mr Barnes commenced on a scheme to dismiss staff he felt were loyal to the claimant from November, 2015 to January, 2016. Mr Barnes was not happy that the claimant was a bank signatory to the respondent account and would at time disapprove some of the payments made.

8. On 20th June, 2016 the claimant reported on duty at 5.30am. At 7.30am, the claimant had a meeting with the Export manager. The claimant was then summoned by Mr Barnes to his office and found him

with the human resource and the finance managers. Mr Barnes informed the claimant that his employment would be terminated and he proceeded to issue him with a letter of termination effective the same date. The respondent relied on clause 20 of the contract of employment.

9. The dismissal from employment was actuated by malice and clear breach of the respondent's statutory duty. Such malice and breach were apparent on the grounds that the claimant had not been issued with any warning letter, there was no notice or a disciplinary hearing for the claimant to defend himself and the respondent failed to give the claimant any reasons for termination of employment. As a result the claimant has suffered loss and damage.

10. The loss and damage occasioned to the claimant was on the grounds that he was the sole breadwinner for his family which has suffered as a result. The claimant is thus seeking the sum of Kshs.20, 208,300.00 and $7,500.00 in gross pay and 20% incentive scheme and 12 months compensations; removal expenses of $7,500.00; and courier expenses of Kshs.3, 910.00.

11. The claimant is also seeking for an award with a declaration that his dismissal was unlawful and unfair, a certificate of service and costs of the suit.

12. The claimant testified in support of his claim.

13. The claimant's testimony is that upon employment by the respondent he served diligently and earned salary increments following increased sales and profits. The claimant was also awarded other benefits and joined the incentives scheme when his performance indicators improved and which included a 20% increase of annual salary; a car allowance; housing and mobile phone allowance.

14. In August, 2015 the respondent hired a managing Director Mr Nik Barnes and the claimant trained him to take up his duties but later Mr Barnes started frustrating the claimant in his work. He would dismiss employees in the claimant's department with notice or informing the claimant. The claimant who was a signatory to the bank account disapproved some payments and which led to bad blood with the managing director.

15. On 20th June, 2016 the claimant was summoned by Mr Barnes to his office and in the presence of the human resource and finance managers was issued with a letter of termination of his employment. There was no notice, reasons or hearing for the claimant to give a defence. Effectively this was a summary dismissal as he was required to leave the respondent's premises immediately.

16. The claimant suffered loss and damage as a result of his dismissal from employment. He had left his consultancy work and clients in South Africa and Mozambique so as to join the respondent's employment. Being 60 years old he cannot find new employment. He has tried to secure new employment but such are respondent's competitors and his contract had a clause with a condition not to work in the same sector the respondent was engaged.

17. Upon dismissal form employment, the claimant was paid for 3 months as *ex gratia*. The contract had stipulated that he would receive relocation costs but these were not paid. The dismissal from employment was unfair and the claims made should be paid.

Defence

18. In response, the respondent admits that the claimant was employed as the Operations Director and being a Consultant. The claimant's consultancy was only extended to allow the claimant complete his work following his poor health of the then operations director. Following the demise of the then operations director, the claimant was offered the position in November, 2014. He was given a fixed term contract dated 4th December, 2014 to commence 5th January, 2015 to 17th December, 2017 and to earn a basic salary of Kshs.1, 120,000.00. The Claimant was eligible to participate in the incentive scheme based on annual performance.

19. The defence is also that under clause 2.4 of the employment agreement the claimant was responsible for the overall management of the operations of the respondent's Nairobi factory and paper procurement including paper stock for Nairobi and Mombasa and to act as a good ambassador for the respondent. The claimant started work in June, 2015 after obtaining a work permit but the salary was not increased to Kshs.1.4 million as alleged and the basic salary remained Kshs.1, 120,000.00 but increased to Kshs.1, 225,700.00 per month. Such related to a proportionate increment for all employees. The claimant's performance assessed did not warrant his participation in the incentive scheme. The house and car allowances remained similar while phone allowance nominally increased to Kshs.2, 153.00 per month.

20. The defence is also that the claimant did not undertake his duties with zeal, he often disclosed confidential information discussed in the board of directors and managerial meetings to other members of staff in a bid to exonerate himself from some of the respondent's unpopular decisions such as remodelling operations. Such disclosures contravened cause 17 of the employment agreement. A good case was when the claimant publicly informed one of the employees that they would be laid off thereby demoralising the employee and causing panic among other members of staff.

21. The claimant was responsible for paper procurement including paper stock for Nairobi and Mombasa under clause 2.4 of his contract, he started a policy on outsourcing various components such as fitment which were initially done internally. Upon a cost analysis of the outsourcing, the respondent decided to resume internal production due to high costs. The claimant instructed a senior employee to ensure the internal production of the fitments failed. In several cases the claimant instructed employees to alter the waste calculation formulae so as to portray an image of reduced waste percentage. This was in serious breach of the claimant's duty to act in good faith and amounted to gross misconduct and allowed the respondent to terminate employment without notice.

22. The respondent hired a managing director when financial performance was very low. One of the key tasks given was to ensure improvement. The claimant contributed to the poor performance when operational costs went high by 24.1% above projected costs following his decision to outsource production of fitments.

23. The claimant was a second signatory to the respondent's bank account similar to the managing director. The allegations made with regard to disproving singing of cheques are misleading and not true. Such is an accounting process and the claimant never took any steps if there was any impropriety.

24. The claimant was informed in several boards meeting that production losses were at all-time high and there was need to address the same as this was his responsibility under the contract agreement. At the annual review meeting on performance in May, 2016 it was noted that the claimant had not addressed operational losses in his department and was therefore invited to a disciplinary hearing. Such meeting was held on 20th June, 2016 in the presence of the human resource manager, the finance manager and the managing director of the respondent. The claimant was invited to respond to allegation of operational losses in his department and what steps he intended to take to address them but in response the claimant wanted to know how much he would be paid in terminal dues. He thus ignored the chance for a hearing. He made no representations despite the serious allegations which would lead to summary dismissal if not addressed.

25. The respondent taking into account he claimant is a foreign national opted to terminate his employment and pay notice and an *ex gratia* of 3 month's pay in a letter dated 20th June, 2016. He was allowed to use the company car, lap top and apartment for a further 3 months post termination of employment.

26. The claimant was in breach of his employment agreement for disclosing confidential managerial information to non-managerial staff and instructing employees to alter wastage calculation reports to portray a picture of efficiency on his side. There were valid grounds and justification. The claimant is only entitled to receive reimbursement of reasonable repatriation expenses under clause 13 of the employment agreement which is not fixed and must be reasonable. The claimant was resident in the respondent's apartment and has very little to repatriate if any.

27. By letter of 18th October, 2016 the respondent made an offer for a reasonable repatriation expenses but the claimant failed to respond.

28. The respondent has offered the claimant his Certificates of Service by letter of 3 rd January, 2017 and his advocate has accepted receipt.

29. To support the defence, the respondent called Mary Kithoka, Mildred Wafula, and Rose Kinyanjui as witnesses.

30. Ms Kithoka testified that as human resource officer for the respondent she worked closely with the claimant whose duties were to ensure operational efficiency, maintenance and production were done without wastage of materials. The claimant had a contract agreement for 2 years from 5th January, 2015 to 17th December, 2017.

31. The claimant failed to achieve his set objectives and operational costs went high. There were management review meetings and his performance had not improved. In May, 2016 another meeting was held to review the January to April, 2016 period and it was noted that there were massive losses. All senior managers had to report on their successes and the challenges and also explain how to address them. The claimant had the largest department.

32. At the close of the respondent's financial year in June, 2016 the international board of the respondent met in Canada to review the respondent performance. Several positions had been scrapped and noted that had the claimant's department worked well the business would have thrived. The claimant promised to improve but there were no noted changes.

33. After the management meeting in May, 2016 the finance manager's still recorded losses going back to 2015. To proceed on this basis would have meant more losses for 2016.

34. The claimant was therefore terminated from his employment due to his performance. What he was expected to deliver was not realised especially operational improvement. This led to loss of jobs. His contract agreement required notice of 3 months and the claimant was pad instead.

35. When the claimant was issued with his letter of termination he called the headquarters office and challenged his terminal package and he was offered 3 months' pay *ex gratia*. In total he was paid for 6 months. The claimant was also allowed to reside in the company apartment and use of the car, lap top for 3 more months. In September, 2016 the claimant surrendered the company car but kept the apartment. He showed a willingness to continue and work in Kenya. The claimant had a furnished apartment and the repatriation costs had been offered but he failed to respond and what he is claiming is high and unreasonable.

36. Ms Wafula also testified that as the Customer Service manager of the respondent worked with the claimant as the link between productions and sales. They held productions meetings with colleagues. Once the claimant found her in the office and informed her that she would be fired. They had an open plan office and all colleagues present herd about this information. This caused fear and demoralised every employee the staff believed the claimant as a senior manager. She informed the human resource manager about it but before the claimant was terminated from his employment she was not called to testify on this matter.

37. Ms Kinyanjui also testified that as Head of Finance for the respondent addressed internal audits from January to November, 2016. While undertaking finance duties the claimant would refuse to sing or approve payments sent to the managing director and when unable to get the managing director, the claimant would not sign for the payments of cheques. In 2016 the respondent had increased costs and on a monthly analysis, labour cost went up and this was reported to management for an intervention. Action was taken to stop increased costs and the respondent stopped outsourced work. Claimant's salary was not made part of production costs as alleged. There is no correlation between the production costs and salaries

due.

38. At the close of the hearing, both parties filed written submissions.

39. The claimant submits that termination of employment was unfair on the grounds that no reasons were given; there was no notice or a hearing. This was contrary to section 35, 41, 43 and 45 of the Employment Act, 2007 and articles 47 of the Constitution, 2010 as held in **David Gichana versus Mombasa Maize Millers Limited [2014] eKLR.** The employer is under a legal duty to prove the reasons for termination of employment but the claimant was only called and issued with a letter terminating employment contrary to principles laid out in **GM versus Bank of Africa Limited [2011] eKLR.** The respondent cannot in this case rely on clause 20 of the employment agreement to justify an illegality committed against the claimant when it failed to give reasons for termination of employment. The evidence by the respondent's witnesses that there were review meetings held to address the performance of the claimant is without evidence. The alleged financial losses are not demonstrated by any evidence. Even where such evidence existed, these were not put to the notice of the claimant to be able to respond to the same before employment was terminated as held in **Elizabeth Osiche Apwora versus National Bank of Kenya [2014] eKLR.** The resulting termination of employment was without substantive or procedural justice and the prayers made should issue.

40. The respondent submits that the termination of the claimant's employment was lawful, fair and in accordance with the law and his employment agreement. Section 44(3) of the Employment Act, 2007 allows an employer to terminate employment where an employee has fundamentally breached his obligations in employment. There are circumstances listed under section 44 of the Employment Act, 2007 which warrant summary dismissal of an employee especially where an employee wilfully neglects to perform any work which it was his duty to perform, is careless and improperly performs work or commits or is suspected to have committed criminal acts against the employee and which leads to loss of property. The claimant as the operations directors was made aware during management meetings that operational costs were high but he failed to address as required in his employment agreement. In an internal inquiry the respondent noted that such operational costs went up due to the wilful neglect of the claimant. As held in **Thomas Sila Nzivo versus Bamburi Cement Limited [2014] eKLR** the respondent had reasonable and sufficient grounds to suspend the employee having acted to the substantial detriment of the employer and its property and the summary dismissal that followed was justified under section 44(4) of the Act. The claimant was well aware of the reasons leading to his termination of employment as held by the Court of Appeal in **Justus Wambua Kavyu versus Kenya Commercial Bank Ltd [2016] eKLR.**

41. The respondent also submits that the remedies sought of 12 months compensation is not with merit. The claimant's gross salary was Kshs.1, 438,885.00 and to rely on any other amount would not be justified. The respondent has made an *ex gratia* payment of 6 months which should be put into account in terms of section 49(4)(m) of the Act. The court should also take into account that the claimant had already exceeded on his due leave days by 16 days and he failed to get the letter of release out of the confidentiality clause so as to obtain new employment elsewhere as held in **African Highlands Produce Limited versus Kisorio, KLR (2001) 172.** The claimant being a well-educated person ought to source for new employment. The claim for repatriation costs is exorbitant and unreasonable. Such can reasonably be assessed s the claimant had no household goods to ship back home. A certificate of service has since been issued.

From the pleadings, evidence, documents and submissions, the issue for determination are;

Whether the termination of employment was unlawful and unfair

Whether the remedies set out are due

42. Both parties agree that the Certificate of Service claimed by the claimant has since been issued vide letter dated 11th January, 2017. Such matter is settled.

43. It is common ground that the claimant was issued with an employment agreement for a term of

2 years starting 5th January, 2015 and ending 17th December, 2017. Such term did not conclude as the respondent issued the claimant with letter terminating his employment on 20th June, 2016 on the grounds that;

> … *Reference is made to the discussion held today with the MD regarding your employment with EAPI, details of which are within your knowledge.*
>
> *Regretfully, this letter is serve to you inform that the management has decided to terminate your employment with effect from toady, 20th June, 2016 in line with clause 20 of your Employment Agreement.*

44. The employment Agreement clause 20 provides as follows; *20. Termination of Employment*

> *20.1 This agreement may be terminated by the parties subject to 3 months' notice.*
>
> *20.2 the Company is entitled to terminate the employment summarily without notice in the event of the Employee's gross misconduct or serious breach of any of the terms of this Agreement. However, despite such termination, the Employee's obligations pursuant to 17 (Confidentiality) and 18 (non-Competition and non-Solicitation) shall remain in full force.*

45. Section 47(5) of the Employment Act, 2007 requires an employee to prove that an unfair termination or wrongful dismissal of employment has occurred. The Court is therefore enjoined by the Statute to consider the issue. The section also requires an employer to justify the grounds for the termination of employment.

46. The grounds which the employer is expected to justify are mentioned in section 41 of the Act and which should relate to misconduct, poor performance or physical incapacity. Section 43 of the Employment Act also requires an employer to prove reasons for termination while section 45 expects the employer to prove that the reasons for termination are valid and fair. These issues go to the substantive fairness of the termination or dismissal.

47. Sections 44 of the Employment Act, 2007 on the other hand address the question of summary dismissal. The Court of Appeal in addressing the provisions of section 44 of the Act in the case of **CMC Aviation Limited versus Mohammed Noor [2015] eKLR** held that;

> … *[on] whether the appellant was justified to summarily dismiss the respondent from his employment, the starting point is a consideration of the provisions of* ***section 44*** *of the* ***Employment Act****. It provides that summary dismissal takes place when an employer terminates the employment of an employee without notice or with less notice period than to which the employee is entitled by any statutory provision or contractual term. Subsection (3) thereof enables an employer to dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligation arising under the contract of service. Subsection (4) sets out various acts that may amount to gross misconduct so as to justify summary dismissal.*

48. Putting the above provisions and findings into account, whether termination of employment is under the provisions of section 41 or 44 of the Act, regard must be taken of the issue of fair procedure in terminating the same. Compliance must be with regard to section 41 as set out above. Even in a case of gross misconduct, the procedure articulated under **section 41 (2)** of the **Employment Act** must be adhered to and which states as follows;

> *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*

49. in **David Gichana Omuya versus Mombasa Maize Millers Ltd [2014] eKLR**, the court held that;

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 manual or policies of the parties or through regulations for public entities.

50. In this regard, section 41 of the Act requires that the employee be treated with fairness whatever the reasons for termination of employment. The employer has the duty to ensure that in the case of termination or dismissal from employment on the grounds of misconduct, gross misconduct, poor performance or any other ground, to observe procedural fairness. Such procedural fairness should entail a notice to the employee setting out the allegations made for the employee to be able to prepare his defence or responses and to be given a hearing in person, in writing or through a representative on the shop floor. Even in a case of gross misconduct where summary dismissal may be considered, the obligation on the employer to hear and consider any defences by the employee is mandatory.

51. In this case, both parties agree that on 20th June, 2016 the claimant was called to a meeting and present were the human resource and finance manager and the managing director of the respondent. there is no record of what exactly happened. On the one hand the claimant stated that he was issued with a letter terminating his employment without any justification or reasons. On the other hand, Ms Kithoka for the respondent testified that there were management meetings where the claimant's work performance was reviewed and noted wanting. He promised to change but this was not the case. There were recorded losses and these were attributed to the performance of the claimant in the operations department. In May, 2016 a meeting was held and the claimant was reviewed again but still, there were no improvements. The claimant was therefore dismissed due to his work performance. In this regard, the defence at paragraph 11 sets out that the respondent was justified in summarily dismissing the claimant from his employment for disclosing confidential managerial information to non-managerial staff and instructing employees to alter wastage calculation reports to portray a picture of efficiency on his side. Such I find are serious allegations made by an employer but there is no record of such serious misconduct. Save for the evidence of Ms Wafula to the effect that the claimant announced to her that she would be dismissed from her employment and which matter she was never called to address with the management, the allegations that the claimant disclosed confidential managerial information to non-management staff in the nature that warranted summary dismissal is not articulated. Ms Wafula does not state when the claimant made his announcement that caused her panic. In any event where such was a matter relating to a management decision, it is quite obvious it was not true as she was not dismissed and is still in the employment of the respondent. was it then true that there was a management decision made known to the claimant and which he disclosed to other employees? No material of such decisions made in management meetings has been submitted. The dates and or times when such management meetings were held and such a decision that the claimant is alleged to have disclosed to persons not in management are not set out.

52. Noting the above, ultimately, the essentials of section 41 of the Employment Act, 2007 is to notify the employee of the charges or reasons being contemplated to terminate his employment to give him time to prepare for his defence to the same.

Where the claimant was summoned on 20th June, 2016 without prior notice of what allegations he was to face and then issued with a letter terminating his employment, such failed the mandatory provisions of the law. Such was without prior notice and there was no time to allow him to prepare for his defence. Where events and alleged conduct warranting summary dismissal for disclosure of any confidential information occurred, such material is lacking and when such occurred if at all, the claimant was not issued with notice so as to prepare for his defence on 20th June, 2016. The respondent has failed to lay the grounds for the meeting held on 20th June, 2016. Where this was meant to be a disciplinary hearing, the notice leading to the same and the reasons as to why such disciplinary meeting was necessary is equally lacking.

53. The respondent has failed to meet the threshold of section 41 of the Employment Act, 2007. The termination of employment was procedurally unfair.

54. Section 43 of the Employment Act, 2007 provides that an employer must prove the reasons for terminating employment. Where there are no genuine reason, section 45 of the Act sets out that such

termination of employment is substantively unfair.

55. In employment relations, the shop floor is the best place to source for primary evidence. Where the employee has misconducted himself, the employer is justified in addressing such misconduct on the shop floor by setting up a disciplinary panel or committee or as reason would demand a team to hear the employee before taking a sanction. The matters to be addressed at such meeting must be put to the employee clearly and concisely for him to be able to give a defence. Even in a case of gross misconduct, the employee must be given a fair chance to give his defence unless there are exceptional circumstances which do not allow a hearing to take place. In such a scenario, the employer must demonstrate to the court such exceptional circumstance which could not allow a hearing before summary dismissal.

56. In this case, the letter of termination issued to the claimant and dated 20th June, 2016 does not state the reasons for the same save to refer to clause 20 of the employment agreement. As set out above, clause 20 only relates to termination of employment on notice of 3 months and summary dismissal where the claimant is in breach of a fundamental provision of his employment.

57. As analysed above, the respondent has failed the procedural fairness test where the claimant would have been given a fair chance to argue any allegations made against him. there is no notice or any allegations made out for the claimant to respond to. To thus terminate employment without any basis save to rely on the employment agreement which allowed for termination of employment is contrary to the Employment Act, 200 section 43 read together with sections 41 and 45. An employer cannot dismiss an employee on the simple ground that the employment agree says so. Regard must be given to the law.

58. The Court of Appeal in addressing the provisions of section 45 of the Employment Act, 2007 in the case of **CMC Aviation Limited versus Mohammed Noor [2015] eKLR** held that;

> *In view of the foregoing, we find that the appellant's act of summarily dismissing the respondent from its employment without giving him an opportunity to be heard amounted to unfair termination as defined under **section 45** of the **Employment Act**. In **KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS V MERU NORTH FARMERS SACCO LIMITED, [2013] eKLR,** the Industrial Court held that whatever reason or reasons that arise to cause an employer to terminate the services of an employee, that employee must be taken through the mandatory process as outlined under **section 41** of the **Employment Act.***

59. Unfair termination involves breach of statutory law. Where there is a fair reason for terminating an employee's service but the employer does it in a procedure that does not conform with the provisions of a statute, which still amounts to unfair termination. In this case, the termination of the claimant's employment was procedurally and substantively unfair and contrary to section 45 of the Employment Act, 2007.

Remedies

60. In the letter terminating the claimant's employment, the respondent computed terminal dues to include;

a) *Your salary for June, 2016*

b) *Three months' pay in lieu of notice*

c) *3 months' salary ex gratia*

d) *Leave days were exhausted*

61. The notice pay is paid in accordance with clause 20.1 of the employment agreement. Such provided for 3 months' pay in lieu of notice.

62. The claimant is seeking payment of a gross pay f Kshs.1,438,885 being basic pay together with its 20% incentive scheme pay as had been contemplated under his contract of employment and all being a 12 months compensation and amounting to kshs.20,208,300.00.

63. On the findings above that the claimant was unfairly terminated, section 49(1) (c) provides that upon a finding that compensation for unfair termination of employment is due the same must be assessed as follows;

> *the equivalent of a number of month's wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.*

64. The applicable salary is the gross monthly salary of the employee as at the time of termination of employment. The claimant at the time his employment was terminated was earning a gross salary of Kshs.1, 438,885.00 per month. The claimant was then under an employment agreement ending 17th December, 2017.

Have the claimant not been unfairly terminated form his employment, he would have legitimately worked for the full term contract.

65. Section 49(1)(a) of the Employment Act, 2007 allow the court to award for the remainder term contract, or make an award of compensation of up to 12 months' salary or make an award for both. However the court must be judicious in ensuring the interests of both parties are taken into account particularly where the employer has made terminal payments and complied with provisions of section 49(4).

66. In this case, the claimant was paid in lieu of notice in accordance with the employment agreement and also paid an *ex gratia* amount equivalent to 3 months salary. Had the claimant been allowed to serve under his full term contract, he had 18 more months of service. his contract had contemplated either party would terminate it by notice of 3 months of payment in lieu thereof. With the respondent making payment of 3 months and a further 3 months *ex gratia* payment, an award of six (6) months in compensation is hereby appropriate and sufficient to address the unfair termination of employment. Based on the last paid salary of Kshs.1, 438,885.00 for 6 months all amounts to Kshs.8, 633,310.00 in compensation.

67. The claim for removal expenses is a matter the parties had agreed upon under clause 13 of the employment agreement. Such repatriation agreement provided for a *reasonable repatriation expenses.*

68. In submissions, the claimant has justified the claim for the amount of $7,500.00 on the basis that to transport his good to Germany he will require this much amount. It is admitted that the claimant was accommodated by the respondent in a furnished apartment. The claimant does not state what is to be shipped back to his country and I take notice that during his stay in the country he must have acquired personal items he would like to carry with him back to his country. in the respondent's letter of 18th October, 2017 offering to assess the goods to be transported so as to ensure a reasonable repatriation cost is made, such I find to be reasonable and what the parties had contemplated under the employment agreement.

69. Had the work relationship ended as contemplated, the arrangement of the respondent assessing the costs due for repatriation would have been logical. But now the claimant has remained in the country since his employment was terminated and been forced into litigation. In view of the claim for $7,500.00 in removal expenses, between Kenya and Germany, such I find to be reasonable and fair save that the next claim for counter-expenses for DHL to send demand letters from Kenya to Monaco is not justified. All such expenses should be covered in the global sum of removal expenses awarded at $7,500.00.

Accordingly, judgment is hereby entered for the claimant with a declaration that the termination of employment was unfair and compensation is hereby awarded at Kshs.8, 633,310.00; relocation expenses awarded at $7,500.00 [Kshs.757, 429.50 the equivalent CBK going rate today] and costs of the suit.

Read in open court at Nairobi this 20th day of April, 2018.

M. MBARU

JUDGE

In the presence of:

Court Assistant:……

……..

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