



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 2263 OF 2012**

**(Originally Nairobi High Court Civil Case No. 1299 of 1999)**

**ALICE NJERI WAMUIGA.....CLAIMANT**

**v**

**CENTRAL BANK OF KENYA.....RESPONDENT**

**JUDGMENT ON QUANTUM**

1. Alice Njeri Wamuiga (Claimant) instituted legal proceedings against the Central Bank of Kenya (Respondent) before the High Court in 1999 alleging that her dismissal from employment was wrongful and that her terminal benefits be offset against any liabilities due to the Respondent.
2. The Claimant also sought an order restraining the Respondent from dealing with a certain named property.
3. The Cause passed through the hands of several Judges, and there are as many rulings and orders on record.
4. An Appeal was even preferred against one of the Rulings but its fate was not disclosed to the Court.
5. On 30 September 2005, Ransley J (as he then was), while rejecting an application by the Claimant for extension of time to file an *amended Plaintiff* directed that the question as to liability be prosecuted within 2 months or the suit risk being dismissed.
6. The Court also directed that it would make an order on the amendment after the determination of the question of liability.
7. The Claim thereafter proceeded to hearing and the Claimant gave her testimony on 3 February 2006 and 8 February 2006, when she closed her case.
8. The Respondent opted not to call any witness and indicated that it would make submissions based on the record.
9. In a judgment delivered on 27 March 2006, the Court (Ransley J ) stated as follows  

I find that the defendant had the right to dismiss the Plaintiff from their services and that the dismissal of the Plaintiff was not wrongful.

As the Plaintiff was dismissed for misconduct then the provision of Rule 6.21 apply which entitled the Plaintiff to three months' notice in writing or three months' salary in lieu of notice. This is in contrast to Rule 6.23 where instant dismissal only applies to gross misconduct.

Having so found, I will hear the Defendant as to what the Plaintiff is entitled to by way of compensation for lack of notice or payment of three months' salary in lieu of notice. I will also deal after those arguments with costs and the fate of the counter-claim.
10. On 19 July 2005, the Claimant sought an extension to file an amended Plaintiff and in a strongly worded ruling delivered by Khamoni J (as he was then), the Judge declined to allow the order sought.
11. On 14 February 2011, the Respondent filed an application seeking an order dismissing the Cause for want of prosecution. The application was marked as withdrawn on 24 May 2011.
12. On 19 September 2012, the Claimant filed another application seeking leave to amend the Statement of Claim and on 7 November 2012

Mabeya J allowed the application and directed that the amended Plaintiff be filed and served within 14 days.

13. In the same ruling, the Judge ordered that the suit be transferred to this Court for hearing and determination.

14. When the file was placed before Nzioki wa Makau J on 20 November 2012, the Court directed the parties to exchange witness statements in readiness for a hearing (the parties did not comply and the orders were extended).

15. On 23 January 2013, the Respondent filed an application seeking the setting aside of the orders issued by Mabeya J on 7 November 2012.

16. In a ruling delivered on 8 March 2013, the Court set aside the orders of Mabeya J and further directed that the parties file documents in relation to the *compensation question* within 14 days.

17. The next time the file was in Court (on 13 March 2017), the Court directed the parties to exchange submissions within 14 days (again the parties did not comply).

18. On 6 November 2017, the parties informed the Court that they were negotiating but nothing came out of the negotiations.

19. On 6 February 2018, the file was placed before me and I directed the parties to file and exchange submissions and in default the Cause would stand dismissed.

20. The Claimant eventually filed her submissions on 7 February 2018 while the Respondent filed its submissions on 16 February 2018.

21. The parties highlighted the submissions on 21 February 2018.

22. In her submissions, the Claimant introduced an issue which was not pleaded nor an appropriate order sought through an application.

23. The issue was that, based on the ruling by Nzioki wa Makau J, this Court ought to direct that the proceedings before Ransley J were a mistrial which had occasioned a miscarriage of justice.

24. The Court declines that invitation as it is not only incompetent but mischievous.

25. In the view of the Court, there are only 2 questions remaining for the determination of the Court, and these are, *quantum of damages due to the Claimant for breach of contract in terms of contractual agreement and the status of the Respondent's counter-claim*.

#### **Damages for breach of contract**

26. In terms of contractual agreement, the Claimant's employment could be determined by the giving of 3 months written notice or equivalent of 3 months' pay in lieu of notice.

27. The Claimant however urged that she be awarded Kshs 438,418,336/50 being *loss of earnings, 3 months' pay in lieu of notice, pension, insurance, medical cover benefits, annual increments, special damages, leave allowance, transport allowance, aggregated and general damages, costs and interest*.

28. These heads of reliefs (save for *pay in lieu of notice*) were not part of the pleadings at the time the Cause was heard by the High Court and upon on which judgment was delivered.

29. On 29 November 2001, Ringera J declined an application seeking to amend the Plaintiff and made an order that hearing proceed on the basis of the initial Plaintiff.

30. The Claimant made another attempt to get leave to amend the Plaintiff, and in a ruling delivered on 20 December 2002, the Claimant was granted leave to file an amended Plaintiff within 7 days but that order was not complied with (an application seeking extension of time to comply was filed in Court on 19 July 2005 and Khamoni J dismissed the application on 1 August 2007).

31. Even in her testimony, the Claimant did not make reference to these heads of claim.

32. Considering that these heads of claims/reliefs were introduced through a *proposed Amended Plaintiff* which was not allowed by the Court, it is not open to the Claimant to present them through submissions on the question of damages, nor for the Court to examine them.

33. The Court will only be guided by the pleadings formally on record in the endeavour to arrive at appropriate damages.

34. That endeavour is a straight forward exercise as the law books are replete with the reliefs available in cases of wrongful dismissal under the common law (which was the applicable legal regime in place then).

35. Two decisions from the Court of Appeal addressed that question of damages for breach of contract at that time (*Rift Valley Textiles Limited v Edward Onyango Oganda* (1994) eKLR and *Cyrus Nyaga Kabute v Kirinyaga County Council*, Civil Appeal No. 29 of 1985 (Unreported)).

36. In the Oganda case, the Court stated

The contract of employment between the appellant and the respondent specifically provided for a notice period and it also provided for what was to be done if either party was unable to comply with the said notice period, namely, to pay the other party for the notice period. In CYRUS NYAGA KABUTE V KIRINYAGA COUNTY COUNCIL, Civil Appeal No. 29 of 1985 (Unreported), the appellant had made prayers for, among others:-

(iii) general damages for loss of employment and retirement benefits from the date of judgment to the attainment of the appellant's 60th birth-day;

(iv) aggravated damages and general damages for breach of contract.

In rejecting these claims, this Court said:-

Apart from that, even if the appellant were able to reopen that matter and supposing that he had shown that his dismissal had not been justified, he would not have been able to get any of the prayers for which he prayed in the plaint. Even though the dismissal may be wrongful, it stands and what flows from the breach of the conditions of service, is damages according to the terms of contract. Those damages would not have been aggravated damages and would not have given him benefits up to his 60th birth-day, nor arrears of salary from July 1980. In fact appellant was given on normal retirement - arrears of salary up to June 1980, gratuity and payment in lieu of leave ...

37. This authority binds this Court.

38. The Claimant was not given notice and therefore she was and is entitled to 3 months' pay in lieu of notice (her salary at time of separation was Kshs 57,696/-).

#### **Counter-claim**

39. The Respondent did not produce and prove evidence in respect to the Counter-claim and therefore it stands to be dismissed.

#### **Conclusion and Orders**

40. In light of the above, the Court finds and holds that the Claimant is entitled to the equivalent of 3 months' pay in lieu of notice and the Court awards her

(a) Pay in lieu of notice                      **Kshs 173,090/-**

41. The conduct of the Claimant in this Cause leaves a lot to be desired.

42. Severally she did not comply with Court orders. She is denied costs.

**Delivered, dated and signed in Nairobi on this 17<sup>th</sup> day of April 2018.**

**Radido Stephen**

**Judge**

#### **Appearances**

For Claimant Mr. Maosa instructed by Maosa & Co. Advocates

For Respondent Mr. Okoth instructed by Oraro & Co. Advocates

Court Assistant Lindsey