



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO 677 OF 2017**

**ROBERT KIMUTAI KORIR.....CLAIMANT**

**VERSUS**

**KENYA COMMERCIAL BANK LTD.....RESPONDENT**

**RULING**

1. On 23<sup>rd</sup> October, 2015 this court delivered a judgement in which the court said that it was of the view that it was of the view that whereas the respondent had valid and justifiable reason for terminating the claimant's services initially when it became known that he could have suffered depression, his appeal ought to have been considered in that light. The court for that reason found the refusal to reconsider the claimant's dismissal on appeal to have been unfair.
2. As a consequence the court reduced the claimant's termination on account of desertion to normal termination as per his contract of service with the consequence that he was to be paid salary in lieu of notice as per his contract of service and any other benefit and allowance he would have been entitled to if his services were terminated normally. The court further awarded the claimant eight month's salary as compensation for unfair dismissal.
3. It is unfortunate that the parties in the matter have been unable to agree on the small issue of "any other benefit and allowance an employee would be entitled if services were terminated normally". The court has not had the benefit of seeing the respondent's human resource manual or the relevant portions of the CBA.
4. However, the court is convinced that the respondent has a Human Resource Manual which provides for what employees who leave the service of the Bank either upon resignation, retirement in the interest of the Bank are paid. This include payment of service gratuity where applicable, employees' pension contribution, leave days accrued and so on. It is unfortunate that the respondent has ignored to look at the matter in this light and resolve this matter once and for all.
5. In the circumstances, the court hereby directs the respondent to either compute the claimant's dues if any that he would have been entitled as per his contract of service as per CBA and Human Resource Manual if the claimant's service were to be terminated prematurely in the interest of the Bank other than dismissal or termination as a disciplinary matter or file in court evidence of non-entitlement to these additional payments in order for the court to close the matter.
6. The matter will be mentioned on 9.10.2018 for final orders.
7. It is so ordered.

**Dated at Nairobi this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent