



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2232 OF 2017**

*(Before Hon. Lady Justice Maureen Onyango)*

**PAUL NJAGA KIHARA.....APPLICANT/CLAIMANT**

*VERSUS*

**CHASE BANK (KENYA) LIMITED IN RECEIVERSHIP.....1<sup>ST</sup> RESPONDENT**

**KENYA DEPOSIT INSURANCE CORPORATION.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

This claim was initiated by the claimant against the respondents vide statement of claim dated 10<sup>th</sup> November 2017 and filed on even date alleging wrongful withholding of salary accrued and terminal dues.

The 1<sup>st</sup> Respondent is a financial institution under receivership incorporated under the Company's Act Cap 486 of the Laws of Kenya and duly licensed to conduct banking business and having their registered office in Nairobi.

The 2<sup>nd</sup> Respondent is a statutory corporation established under section 4 of the Kenya Deposit Insurance Act (KDI Act), 2012, Cap 487C of the Laws of Kenya and it is charged with the responsibility inter alia of providing a deposit insurance scheme for customers of member institutions under the KDI Act, and receiving, liquidating and/or winding-up any institution in respect of which it is appointed as receiver or liquidator and presently the designated receiver managing the 1<sup>st</sup> Respondent and having their registered office in Nairobi.

By a contract of employment dated 2<sup>nd</sup> July 2012, the 1<sup>st</sup> Respondent agreed to employ the Claimant who agreed to serve as the Chief Strategy Officer with effect from 1<sup>st</sup> August 2012 at a basic monthly salary of Kshs.1,500,000/-, monthly car allowance of Kshs.30,000/- and monthly telephone allowance of Kshs.20,000/-.

With effect from 1<sup>st</sup> January 2015, the Claimant was promoted to the position of Chief Executive Officer and his basic salary increased to Kshs.3,700,000/- per month which sum is inclusive of car allowance of Kshs.150,000/- and Telephone allowance of Kshs.50,000/-.

On or about the 30 of November 2016, the Claimant and the Respondents entered into a mutual separation agreement for the termination of the Claimant's employment as the 1<sup>st</sup> Respondent was restructuring in a bid to create a sustainable payroll structure.

By letters dated 30<sup>th</sup> November 2016 and a further letter dated 20<sup>th</sup> March 2017 respectively, the 2<sup>nd</sup> Respondent agreed to pay the Claimant his terminal dues as follows: -

**Letter dated 30<sup>th</sup> November 2016**

- a. Salary accruable up to 31<sup>st</sup> August 2016
- b. Three months' salary in lieu of notice
- c. One month salary for every year of service
- d. Medical cover for the Claimant and his family up to and until 31<sup>st</sup> March 2017 Salary in lieu of any outstanding leave days

e. Pension pursuant to current laws

**Letter dated 20<sup>th</sup> March 2017**

- a. Salary until 31<sup>st</sup> August 2016
- b. 3 months' salary as gratuitous
- c. 1 month salary for every year of service
- d. Any leave days accrued and not taken
- e. Retention of Medical Scheme until the period 31<sup>st</sup> March 2017.
- f. Retention of Staff loans at staff interest rates subject to clearance of any arrears by 15<sup>th</sup> April 2017
- g. Pension pursuant to current laws

The Respondents in acknowledgement of the mutual separation agreement subsequently paid the Claimant a total sum of Kshs.25,900,000/- being three months' salary in lieu of notice and one month's salary for each year worked.

During the period of employment on diverse dates between 6<sup>th</sup> September 2012 and 24<sup>th</sup> June 2014, the 1<sup>st</sup> Respondent granted the Claimant 3 loan facilities which were to be repaid at a subsidised staff interest rate of 6%. Two of the loan facilities were advanced by the 1<sup>st</sup> Respondent as personal loans while the third loan was advanced under Zarafeth Limited in which the Claimant is a majority shareholder. The three loan facilities were secured by the Claimant's residential property in Lavington and Embakasi in Nairobi County respectively.

That the 2<sup>nd</sup> Respondent agreed that upon separation from the 1<sup>st</sup> Respondent, the Claimant would continue paying his loan facilities at a staff interest rate of 6% per annum. The claimant avers that in breach of the terms of separation, the 1<sup>st</sup> Respondent unilaterally converted the Claimant's loan facilities to commercial interest rates of 14% per annum.

That as a result of the new interest rates, the Claimant fell into arrears and consequently, the Claimant's name was forwarded to the Credit Reference Bureau as a defaulter by the 1 Respondent and the Claimant was forced to pay Kshs.1,700,000/- being the excess interest and penalty accrued on the loan facilities.

That despite the letters by the 1<sup>st</sup> Respondent outlining the payment of the Claimant's dues, the Respondents have not settled the Claimant's terminal dues as agreed.

That the Claimant was a member of the 1<sup>st</sup> Respondent's Staff Retirements Benefits Pension Scheme and the 1<sup>st</sup> Respondent has only paid Kshs.3,363,928/- from the total outstanding of Kshs.11,322,438.20/-.

The Claimant's avers that he has not been paid for his accrued 45 leave days from the date of engagement with the 1<sup>st</sup> Respondent to date.

That the Respondents have unlawfully and without justifiable cause and/reason whatsoever proceeded to withholding the salary and terminal dues of the Claimant and which action is oppressive and in total disregard to the law.

The Claimant avers that the 1<sup>st</sup> Respondent's has breached the actual and implied employment contract whereas the 2<sup>nd</sup> Respondent has breached the agreement acknowledging mutual termination of employment from the 1<sup>st</sup> Respondent.

The Respondents have failed to provide the Claimant with reasonable grounds upon which the Claimant's dues have been withheld.

That the Respondents have neglected to remit the Claimants deducted statutory deductions and taxes to the relevant Government authorities, that is National Hospital Insurance Fund (NHIF), National Social Security Fund (NSSF) and Kenya Revenue Authority (KRA) and the default for income tax at KRA for the tax period 2013, 2014 and 2016 as below: -

<b>P9A TOTAL</b>		<b>AMOUNT REMITTED UNLAWFULLY</b>	
<b>YEAR COLLECTED TAX</b>		<b>TO KRA (KSHS.)</b>	<b>WITHHELD TAX</b>
	<b>(KSHS.)</b>		
2013	7,534,829.00	3,875,730.00	3,659,099.00
2014	13,315,502.00	8,859,461.00	4,456,041.00

2015	19,801,763.00	19,801,763.00	-
2016	13,816,674.00	12,402,299.00	1,414,375.00
	<b>54,468,768.00</b>	<b>44,939,253.00</b>	<b>9,529,515.00</b>

The claimant prays for judgment against the respondents jointly and severally for –

- i) Unpaid Pension of Kshs.7,958,510.20/-
- ii) Unpaid leave days totalling to Kshs.7,568,182/-
- iii) A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent pays KRA, the unremitted Income tax of Kshs.9,529,515/- for the tax period 2013, 2014 and 2016 and any attendant penalties and interest.
- iv) A declaration that the withholding of the Claimant's terminal dues is unlawful, illegal and *void ab initio*.
- v) A declaration that the Claimant continues to re-pay the loan facilities at staff rate of 6% per annum.
- vi) Certificate of Service
- vii) General damages
- viii) Aggravated and Exemplary Damages
- ix) Interest on i, ii, iii, and v above at a court rates.
- x) Cost of this suit
- xi) Any other relief the Court may deem just

Together with the statement of claim the claimant filed a notice of motion under certificate of urgency seeking the following orders –

1. That this application be certified as urgent, service be dispensed with and the same be heard ex-parte in the first instance.
2. That pending the hearing and determination of this application *inter partes*, the court issues an injunctive order restraining the 1<sup>st</sup> respondent either by themselves, employees, servants and/or agents from applying commercial rates on the claimant's outstanding loan facilities.
3. That pending the hearing and determination of this application *inter partes*, the court issues an order compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondent to pay the Claimant's terminal dues withheld by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
4. That the 1<sup>st</sup> respondent be compelled and ordered to apply the interest rate of 6% per annum pending the hearing and determination of this application and the final determination of the suit.
5. That this honourable court do grant an order of injunction against the 1<sup>st</sup> respondent and/or its employees, agents and/or servants from applying commercial interest rates on the claimant's outstanding loan facilities and do apply the agreed interest rate of 6% pending the hearing and determination of this application and the final determination of the suit.
6. That the cost of this application be provided for.
7. That this court do make such order and or further orders as it may be deem fit, fair and just in the circumstances in the interest of justice.

The application is supported by the grounds on the face thereof and the affidavit of the claimant sworn on 10<sup>th</sup> November 2017 and a further affidavit sworn and filed on 16<sup>th</sup> February 2018.

The respondents filed a replying affidavit of KEVIN KIMANI, Assistant Legal Officer of the 1<sup>st</sup> respondent sworn on 12<sup>th</sup> February 2018 and a memorandum of response dated 15<sup>th</sup> December 2017 and filed on the same date.

In both the replying affidavit and memorandum of response the respondents admit employment of the claimant by the 1<sup>st</sup> respondent originally as Chief Strategy Officer on 1<sup>st</sup> August 2012 and as Chief Executive Officer from 1<sup>st</sup> January 2015 on terms as expressed by the claimant. The respondents further admit that the claimant and 1<sup>st</sup> respondent signed a mutual separation agreement as pleaded by the respondent.

The respondents state that during the claimant's employment with the 1<sup>st</sup> respondent he was advanced credit facilities as follows –

- a. On the 6<sup>th</sup> day of September 2012, the 1<sup>st</sup> Respondent issued to the Claimant a mortgage loan facility in the sum of Kshs.7,488,406/= with an interest rate of 5% subject to the Claimant's employment with the Bank. The interest payable to this loan was subject to adjustment to commercial rates at the discretion of the 1<sup>st</sup> Respondent upon termination of the Claimant's employment;
- b. On the 4<sup>th</sup> day of April 2013, a term loan facility of Kshs.60,000,000/= was issued to Zarapheth Limited, a company in which the Claimant holds 99.9% shares, at an interest rate of 5% per annum secured by a charge over Property Unit 3, Mageta Villas on Land Reference No. 3734/1370 Nairobi. The terms of the loan facility expressly reserved the 1<sup>st</sup> Respondent's absolute and unfettered discretion and right to vary the interest rate; and,
- c. On the 10<sup>th</sup> day of July 2014, at the behest of the Claimant, an Overdraft facility in the sum of Kshs.11,930,000/= issued to Zarapheth limited was converted into a Term Loan facility. The interest rate of 6% per annum was applicable and the 1<sup>st</sup> Respondent also reserved its right to vary' the same at any time in its absolute and unfettered discretion.

The respondents aver that the separation agreement expressly provided that retention on staff loan interest rates was subject to clearance of existing loan arrears accrued on the credit facilities which the claimant failed to do.

The respondents state all dues payable to the claimant were satisfied and deny withholding the claimant's terminal dues. The respondents further state that all payments due to the claimant under the Staff Retirement Benefits Pension Scheme have been paid denying the claimant's averment that only Kshs.3,363,928 was paid. The respondents further state that all statutory deductions to NSSF, NHIF and Kenya Revenue Authority were remitted as required by law. The respondents pray that the claim be dismissed with costs.

In view of the fact that the only disagreement of the parties was only in respect of compliance with the separation agreement, the case was by consent canvassed by way of written submissions.

The claimant submitted that subsequent to the mutual separation agreement, the respondent failed to remit the claimant's total outstanding dues and further applied commercial rates on his outstanding loan facilities causing the claimant to fall into arrears. That as a result the claimant was listed as a defaulter by Credit Reference Bureau and he was compelled to pay Kshs.1,700,000 being excess interest and penalties accrued on the loan facilities.

The claimant has submitted separately on the application and the claim. I will only deal with the issues in the claim as the application has been subsumed in the claim and overtaken as it sought interim orders pending hearing and determination of the claim.

The claimant submits that a separation agreement should be treated in law in the same manner as any other agreement between an employer and an employee, relying on the South African case of **GBENGA-OLUWATOVE -V- RECKITT BENSKISER SOUTH AFRICA (PTY) LIMITED AND OTHER (JA 95-2014) [2016] ZALAC 2 (3 February 2016), Labour Appeal Court.**

Further the claimant relied on the case of **LISEBO LERATO PEARL RAMABULANA AND PILANSBERG PLATINUM MINES - LABOUR COURT OF SOUTH AFRICA. CASE NO. J808/13**, where it was held that:-

*“It is true that labour law has introduced certain flexibility in the enforcement of employment contracts. This is done to advance fairness, a concept which often comes down to balancing the interests of parties. With the preamble to the LRA in mind, one appreciates how certain flexibility in the strict enforcement of employment contracts can, in particular circumstances, advance labour peace, social justice and economic development. However, if an employer, to the benefit of an employee, literally contracts out of the fairness jurisdiction, it has presumably accepted the risks that this entails. One of these risks is that the employer's acts or omissions which in labour law would merely constitute procedural unfairness could now constitute breach of contract depending on how the matter is pled. One effect of this is that the more circumscribed and balanced statutory remedies prescribed by the LRA, for example, for failing to provide an employee with a disciplinary hearing are foregone for stricter and more far-reaching contract law remedies.*

*A well-developed set of legal principles underpin contract law, specifically the conditions under which a contract may be terminated, and these are not lightly to be tampered with.*

*When parties contract on specific contractual terms, they bind themselves to honour and perform their respective obligations in terms of that contract. Each party is entitled to expect that the other party has carefully looked into the future and has satisfied itself that it can meet its obligations for the entire term of the agreement. Accordingly, no party is entitled to later seek to escape its obligations in terms of the ' contract on the basis that its assessment of the future had been erroneous or had overlooked certain things. This is simply because the employer is free not to enter into an agreement.*

*Not to hold the respondent to the contract law obligations it voluntarily and lawfully imported into an employment relationship would be to introduce a grave level of uncertainty into a range of similar commercial arrangements.”*

The claimant further relied on the case of **NATIONAL BANK OF KENYA LIMITED -V- HAMIDA BANA & 103 OTHERS** where the

Court of Appeal upheld the terms of a Voluntary Early Retirement Scheme package citing the case of **WILLIAM BARASA OBUTITI -V- MUMIAS SUGAR COMPANY LIMITED (2006) eKLR** where it was held –

*“We would not agree with Mr Menezes in his submission that VER was irregular in any manner. It is open to an employer and employee at any time during the currency of a contract of employment to terminate the contract by agreement. The agreement of mutual release may be subject to terms as in the VERS. In such circumstances, the agreement will be effective to override formal or substantial restrictions placed on the termination of the contract by the original contract itself.”*

The Court of Appeal further stated –

*“A concomitant of the doctrine of freedom to contract is the binding force of the contracts. See Chitty on Contracts Para 1-036 as such, the learned judge by holding otherwise re-wrote the terms of the VER contrary to the intention of the parties. It did not matter that the Respondents got less favourable terms than those that were provided for under the HR manual or CBA. What matters is that the parties voluntarily agreed on the terms of the VER which ought to have been enforced. We agree and adopt the reasoning of Lord Hoffman in **Attorney general of Belize vs Belize Telecom Ltd (2009) UKPC 10** to the effect that:*

*“The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute, or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument mean. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would be reasonably available to the audience to whom the instrument is addressed.”*

The claimant also relied on the case of **STATE OF PUNJAB & OTHERS VERSUS DHANIIT SINS SANDHU Civil Appeal No. 5698-5699 of 2009** where the Supreme Court of India expressed itself as follows:

*“The principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled to on the footing that it is valid and then turn round and say it is void for purpose of securing some other advantage. ”*

The claimant further relied on the decision of the Supreme Court in **RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION AND ANOTHER -V- DIAMOND AND GEM DEVELOPMENT LIMITED AND ANOTHER AIR 2013 SC 1241** in which the court made an observation that:

*“A party cannot be permitted to blow hot and cold, fast and loose or approbate and reprobate. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such a contract or conveyance or order. This rule is applied to do equity however; it must not be applied in a manner as to violate the principles of good conscience. ”*

The claimant further relied on the decision of Ndolo J in **KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS UNION VERSUS NATIONAL SOCIAL SECURITY FUND**, Cause No 984 of 2012 where the Court had an opportunity to construe the terms of a Voluntary Early Retirement Scheme entered into between an employer and employee and relied on the case of **William Barasa Obutiti Versus Mumias Sugar Company Limited (2006) eKLR** where the Court of Appeal stated:

*“It is open to an employer at any time during the currency of a contract of employment to terminate the contract by agreement. The agreement of mutual release maybe subject terms as in the VERS (Voluntary Early Retirement Scheme). In such circumstances, the agreement will be effective to override formal or substantial restrictions placed on the termination of the contract by the original contract itself.”*

L. Ndolo J. stated:

*“The claimant’s issue with the VER terms offered by the Respondent in this case is that the terms are inferior to those contained in an update to staff issued on 2<sup>nd</sup> November 2010 as well as those offered to Albert Odero. For this reason, the Claimant wants the court to halt implementation of the VER scheme to allow negotiation of fresh terms. The court has taken note that this is a major issue in the main cause on which this application hangs. To acceded to the claimants request therefore effectively dispose of the main cause.*

*VER schemes are by nature and design specific and time bound. The terms of any specific VER scheme are determined by several factors, the major one being affordability. The fortunes and circumstances of employers are a moving target and it is therefore not always possible to guarantee standard VER terms for all staff for all time, it is not possible to establish an immutable precedent in VER. Applicable terms may vary depending on the circumstances in which the employer finds itself.*

*In view of the foregoing, the claimant’s application for suspension of the VER scheme pending negotiation with the respondent is disallowed. It is so ordered.”*

The respondent did not file written submissions.

## **Determination**

From the pleadings, submissions and authorities, I understand the claimant to be saying that the respondent breached the separation agreement by one; failing to pay his full terminal dues being full pension and pay in lieu of the balance of leave, second; by charging him commercial interest rates from 1<sup>st</sup> March 2017 when he was not in default and finally, by referring him to Credit Reference Bureau based on the default arising from the charging of commercial interest. The claimant avers that in actual fact he was not in arrears as there was a balance of Kshs.15,709,299.57 in his account as at 15<sup>th</sup> April 2017 when he was supposed to clear arrears. He further avers that the respondent did not remit deductions in respect of income tax to KRA exposing him to penalties.

The issues for determination are therefore whether the respondent breached the terms of the separation agreement and whether the claimant is entitled to the reliefs sought.

### **Breach of Separation Agreement**

The terms of the separation agreement between the claimant and the respondents are contained in two letters dated 30<sup>th</sup> November 2016 and 20<sup>th</sup> March 2017 as follows –

#### **Letter dated 30<sup>th</sup> November 2016**

- a. Salary accruable up to 31<sup>st</sup> August 2016
- b. Three months' salary in lieu of notice
- c. One month salary for every year of service
- d. Medical cover for the Claimant and his family up to and until 31<sup>st</sup> March 2017 Salary in lieu of any outstanding leave days
- e. Pension pursuant to current laws

#### **Letter dated 20<sup>th</sup> March 2017**

- a. Salary until 31<sup>st</sup> August 2016
- b. 3 months' salary as gratuitous
- c. 1 month salary for every year of service
- d. Any leave days accrued and not taken
- e. Retention of Medical Scheme until the period 31<sup>st</sup> March 2017.
- f. Retention of Staff loans at staff interest rates subject to clearance of any arrears by 15<sup>th</sup> April 2017
- g. Pension pursuant to current laws

At page 64 of claim is a “*Notification of Interest Rate Change...*” which advises the claimant that “*we wish to inform you that the interest rate on all our loan accounts was changed from the staff rate to market rate on 1<sup>st</sup> March 2017...*” The communication is contained in an email dated 31<sup>st</sup> March 2017.

It is clear from the said communication that this was in breach of the terms of the separation agreement contained in the letter dated 20<sup>th</sup> March 2017 to the effect that the staff interest rates shall be retained subject to the claimant's clearance of arrears by 15<sup>th</sup> April 2017. As demonstrated in the claimant's account statement at page 8 of his further affidavit sworn on 16<sup>th</sup> February 2018 his account balance as at 5<sup>th</sup> April 2017 was Kshs.18,586,867.15 and on the same date the account was debited with Kshs.1,558,96398 on account of interest in account no. 001STHL153640004, Kshs.879,409.80 on account of principal amount on the same account no. 001STHL153640004, a further sum of Kshs.238,309.30 being interest on account no. 001STHL153640004 and principal in the sum of Kshs.200,884.50 on account of principal amount in the said account. At the end of the day, that is 5<sup>th</sup> April 2017, the account balance in the claimant's account was Kshs.15,709,229.57. As at 24<sup>th</sup> April 2017 after recovery of principal and interest in account no. 001STHL153640004, the account balance was still 14,972,638.77.

It is therefore not possible that the claimant was in arrears as at 15<sup>th</sup> April 2017, to warrant the change in interest rates from staff rate of 6% to market rate of 14%. The commercial interest rate was charged from 1<sup>st</sup> March 2017 when the agreement was that the commercial interest rates would become applicable should the claimant not have cleared interest arrears by 15<sup>th</sup> April 2017.

The claimant having not been in arrears, there was also no reason for reference of his credit status to the Credit Reference Bureau when he was not in default and had a credit balance in his account held in his account at the respondent's bank within the respondent's reach.

I therefore find the respondent to have been in breach of the separation agreement.

## **REMEDIES**

The claimant prayed for several remedies –

### **a... Unpaid Pension**

The claimant admits having been paid pension in the sum of Kshs.3,363,928 out of a total pension balance of Kshs.11,322,438.20.

According to the statement of Enwealth Financial Services, at page 66 of claimant's bundle of documents, the member contributions were 3,652,765.12 while the employer contribution was Kshs.5,6679,673.08 making a total of Kshs.11,322,438.20 that the claimant has claimed.

According to Retirement Benefits Rules, an employee is entitled to 100% of his benefits and only a portion of the employer's contributions if he leaves service before attaining the age of 50 years. The claimant has not stated what his age was at the time of leaving service. He has not stated that he sought explanation from the Managers of the respondent's Staff Retirement Benefits Pension Scheme and failed to get a response.

According to the Rules under the Retirement Benefits Act, it is the trustees or the pension managers who hold the funds and from whom payment of the pensions' should be sought. Any disagreement should be referred to the Chief Executive Officer of Retirement Benefits Authority. Appeal lies to the Retirement Benefits Tribunal where a person is dissatisfied with the decision of the Chief Executive Officer. The claim is thus prematurely before this

I must however fault the respondent for not having directed the claimant to the Trustees or Managers of the scheme, or explained why the claimant could not access the employer's portion of his pension contributions.

This prayer must however fail on the grounds above and I accordingly dismiss it with advice to the claimant to demand the same from the managers and/or trustees of the pension scheme.

### **b... Unpaid Leave Days totalling Kshs.7,568,182**

The claimant's letter of release states that he would be paid any leave days accrued and not taken. The claimant prayed for Kshs.7,568,182 in lieu of 45 days leave. In response to the claimant's prayer, the respondent merely stated that the claimant's terminal benefits were disbursed according to the letters dated 30<sup>th</sup> November 2016 and 20<sup>th</sup> March 2017. No breakdown of the payments made were submitted to court by either party. The claimant only admitted payment of Kshs.25,900,000 which the claimant stated was in respect of three months' salary in lieu of notice and one month's salary for every year worked.

In the absence of proof that the claimant was paid in lieu of leave outstanding and going by the provisions of Section 10(3)(a)(i), 10(6) and 10(7), I award him pay in lieu of 45 days leave in the sum of Kshs.6,057,692 based on his basic salary of Kshs.3,500,000.

### **c... A declaration A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent pays KRA, the unremitted Income tax of Kshs.9,529,515/- for the tax period 2013, 2014 and 2016 and any attendant penalties and interest.**

Making income tax returns is an individual's responsibility. The same is done annually. The only responsibility of the employer is to issue the employee with a tax remittance certificate, which the employee would then use to make his tax returns. From the prayer by the claimant, it is obvious that he did not file his tax returns for the years 2013, 2014 and 2015 or else he would have resolved the issues of the unremitted tax.

I have perused the tax remittance records filed by the respondent for the relevant years together with the correspondence with Kenya Revenue Authority and I am satisfied that the respondent remitted all taxes deducted from the claimant's salary. This is a question of reconciliation, which the claimant can do directly with the income tax department upon obtaining the relevant records from the respondent.

The prayer is therefore declined and is accordingly dismissed.

### **d... A declaration that the claimant continues to re-pay the loan facilities at Staff Rate of 6%**

Having found that the claimant was not in arrears of any loan repayment of principal or interest by 15<sup>th</sup> April 2017 he is entitled to enjoy the staff preferential interest rate of 6% in accordance with his separation agreement and I declare accordingly. The respondent is accordingly directed to recalculate the claimant's loan's interest at 6% and give the claimant benefit of any overpayment of interest to be reflected in the loan accounts.

### **e... Certificate of Service**

The claimant is entitled to a certificate of service in accordance with Section

51 of the Employment Act and the respondent is directed to issue the same to the claimant forthwith.

**f... General Damages**

I have found above that the reference of the claimant to the Credit Reference Bureau was unwarranted as he was in arrears. He was compelled to pay Kshs.1,700,000 to clear his name from the reference. The respondents did not deny the said averments.

I find that an award of general damages in the sum of Kshs.1,700,000 is reasonable compensation in the circumstances and I award him the same.

**g... Aggravated and Exemplary Damages**

The claimant did not prove any malice on the part of the respondent to entitle him to aggravated or exemplary damages. I accordingly dismiss the prayer.

**h... Costs and Interest**

The claimant shall have costs of the claim and interest shall accrue at court rates on the decretal sum from date of judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 2<sup>ND</sup> DAY OF NOVEMBER 2018**

**MAUREEN ONYANGO**

**JUDGE**