



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT MOMBASA  
CAUSE NUMBER 863 OF 2015

**BETWEEN**

TERESA CARLO OMONDI ..... CLAIMANT

**VERSUS**

TRANSPARENCY INTERNATIONAL- KENYA ..... RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

*Namada & Company Advocates for the Claimant*

*Kaplan & Stratton Advocates for the Respondent*

---

**JUDGMENT**

1. The Claimant filed her Statement of Claim on 3<sup>rd</sup> December 2012, under Cause Number 2484 of 2012 at the Industrial Court Nairobi. The Cause was transferred to the Employment and Labour Relations Court, Mombasa, with the consent of the Parties' Counsel, on 25<sup>th</sup> February 2015. The Claimant had given evidence partly in Nairobi, before the Trial Judge was transferred to Mombasa.

2. She testified on 1<sup>st</sup> October 2013 and on 24<sup>th</sup> February 2014 at the Court sitting in Nairobi. She gave further evidence, and closed her case on 1<sup>st</sup> July 2016, at the Court in Mombasa. Respondent's Chief Executive Officer Samuel Kimeu gave evidence on 26<sup>th</sup> October 2016 when hearing closed. Parties confirmed the filing of their Closing Submissions on 30<sup>th</sup> November 2016.

***Claimant's Case:-***

3. She states she was employed by the Respondent, a Company registered under the Companies Act Cap 486 the Laws of Kenya, and a Member of the global Transparency International, whose mission is to promote access to information, accountability, transparent and corruption-free Kenya.

4. She was employed as the Deputy Executive Director and Head of Programmes. She performed her duties diligently, and mobilized resources and sustained partnerships with several donor agencies such as

Canadian International Agency [CIDA], Partnership for Transparency Fund [PTF], and United Nations Development Agency [UNDP] among others. She brought on board new partners such as the World Bank who brought in new programmes, funded to the tune of Kshs. 30 million.

5. On 31<sup>st</sup> July 2012, the Respondent unexpectedly, and without assigning any reason, wrongfully, unfairly and maliciously terminated the Claimant's contract, and dismissed the Claimant, by informing her, her contract would not be renewed. She wrote to the Respondent asking for reasons for the decision. No reasons were given.

6. Termination was unfair and unlawful on the following grounds:-

- a) The Respondent did not issue 3 months' notice, or pay to the Claimant 3 months' salary in lieu of notice, as stipulated in the contract of employment.
- b) No reason was given for termination decision as required under clause 2 of the contract.
- c) The Claimant was not given reason or reasons for non-renewal of her contract.
- d) She was not given a hearing.
- e) On issuing the letter of termination on 31<sup>st</sup> July 2012, the Respondent directed the Claimant to clear from her office and hand over any property belonging to the Respondent by 5.00 p.m. the same day. The short notice, cast negative light on the Claimant's reputation among the donors and partners, given her responsibilities towards these donors and partners.
- f) The Respondent informed some junior staff about the imminent termination of the Claimant's contract, before the Claimant was made aware of the decision, which undermined her position and lowered her reputation.
- g) After issuing the Claimant with the letter of termination, the Respondent called an urgent staff meeting, informing staff to clear with the Claimant before 5.00 p.m. the same day.
- h) The Respondent immediately blocked the Claimant from accessing her office e-mails.
- i) Claimant's benefits such as telephone allowance, entertainment allowance and medical cover were stopped immediately, contrary to the terms and conditions of service.
- j) 8 days after termination, the Respondent appointed Mr. Dalmis Okendo to act in Claimant's position. This indicates the position was still relevant and services needed.
- k) The Respondent expressed its reservation about the Claimant being employed by the World Bank Institute as an Independent Consultant. It was only after the World Bank Institute's Representative issued the Respondent with an ultimatum, that the Respondent recanted its reservation.

7. A month before termination, Respondent's Executive Director issued the Claimant with a warning letter, after the Claimant had sent an urgent report to Board of Directors Chairman. The warning was unwarranted and showed the Executive Director intended to execute a malicious scheme against the Claimant.

8. Based on her good performance and competence, which resulted in growth of the Respondent, the Claimant genuinely and reasonably expected that the Respondent would not only renew her contract, but do so, on improved terms.

9. Her monthly salary was Kshs. 300,000 as at the time of termination.

10. She prays for the following orders against the Respondent:-

- a) 3 months' salary in lieu of notice at Kshs. 900,000.
  - b) Equivalent of 2 years' salary for non-renewal of the contract which amounted to dismissal, at Kshs. 7,200,000.
  - c) The equivalent of 12 months' salary being damages for wrongful dismissal at Kshs. 3,600,000
- Total.... Kshs. 11,700,000
- d) General damages.
  - e) Costs of the Claim.
  - f) Interest from the date of Judgment.
  - g) Certificate of Service.

11. The Claimant told the Court she is an Advocate of the High Court of Kenya. She was at the time of giving evidence in the year 2013, working for FIDA- Kenya as Deputy Executive Director.

12. She worked for the Respondent before this, as stated above. She deputized Respondent's CEO. She assisted him with human resources management, strategic direction, and supervision of all programmes. She generated work plans and carried out resource mobilization. She sat in the Board, and liaised with peer Organizations. Samuel Kimeu was the CEO.

13. The Respondent's Board has Committees. The Claimant was nominated to the Programmes Sub-Committee by Board Chair Dr. Richard Leakey. She came from gender background. She did a lot of resource mobilization. She liaised with key international partners, mentioned at the outset.

14. She had a clean disciplinary record until 29<sup>th</sup> June 2012, a month before termination. She had forwarded a report to the Executive Director for Members' Forum. She copied the report to the Board Chair. The Executive Director told the Claimant she had undermined him, by writing directly to the Chair. Reports and minutes used to go directly to Board Members and to the Chair. There was nothing confidential in the report. She sent a copy to the Chair, to save on time. The Executive Director did not see it that way, and slammed the Claimant with a warning letter.

15. The Executive Director issued her the letter of termination, on 31<sup>st</sup> July 2012. The Claimant asked him to state the reasons for the decision. He told her he had issued an executive decision. She was shocked. She had 2 months remaining in her contract. She had 14 days of pending annual leave. She tried to reach a Board Member for assistance but was unsuccessful. She left employment as directed.

16. Before she left, she witnessed through the glass partition staff gather at the Boardroom. An Employee close to the Claimant confided in her that Employees had been called to a meeting at the Boardroom. When they came out, some were in tears. They asked the Claimant why she had been dismissed. Others told her they had been told by Human Resources Manager to expect changes.

17. She cleared within the short period afforded to her. She wrote to Respondent's partners communicating her exit. She was due to teleconference with the World Bank on 1<sup>st</sup> August 2012. She had to inform the World Bank about her changed circumstances. She was not able to fill the exit form, because she was filled with emotion.

18. Termination was not normal. She wrote to the Board, on 1<sup>st</sup> August 2012, asking to be given reasons for the decision. The Board wrote back, undertaking it would revert to her. To-date, the Board has not

reverted. On 8<sup>th</sup> August 2012, Programme Coordinator, Dalmas, was appointed to act in Claimant's role.

19. The World Bank meeting of 1<sup>st</sup> August 2012 was convened by the Respondent. The Claimant was supposed to be the contact person for the World Bank. The Executive Director had indicated to the partners that the Claimant was still on leave, until November 2012, which was untrue. The World Bank Institute wrote to the Respondent asking if the Claimant could be retained as an Independent Consultant. The Executive Director wrote back, saying the Respondent would revert on the request to have the Claimant work as an Independent Consultant. The Respondent wrote to the World Bank Institute, stating it did not have objection on the Claimant working as an Independent Consultant, only after Yvonne of the World Bank Institute, gave an ultimatum to the Respondent.

20. Teresa eventually joined the World Bank Institute, as a Consultant. The consultancy was not permanent. She had joined the Respondent because the Respondent offered her good terms and conditions of employment. Her position was not rendered redundant. There was possibility of renewal. She had to take up jobs, at Kakuma and Daadab Refugee Camps. She eventually returned to FIDA where she had served previously. These new Employers put her to task, wanting to know why she left the Respondent. She did not have any reasons. She has to live with this question.

21. The Respondent is mandated to fight corruption and impunity. Integrity, professionalism and equity are its core values. The Respondent did not put in practice these values, in dealing with the Claimant. The Executive Director simply told her, he had issued an executive decision. She ought to have been allowed, as a minimum, to serve 2 months left in her contract.

22. Other Employees leaving on termination were given different treatment. Driver Jeremiah Njuguna's contract ended on 25<sup>th</sup> January 2013. He was given reason for termination by the Respondent. He was paid all his benefits, as shown in the Claimant's Supplementary Bundle of Documents.

23. There were exit interviews carried out by the Respondent on other Employees who left the Respondent. The record of those interviews is contained in Respondent's documents filed on 18<sup>th</sup> November 2013. All the interviewees left when the Claimant was in employment. The Employees gave recommendation on various issues. Some of the Employees said they had issues with the Claimant's discharge of her supervisory role. They complained however, about other issues such as salary disparity. The Claimant was not heard by the Respondent, on the issues raised in the exit interviews. The issues raised were not brought to her attention by the Executive Director.

24. Cross-examined, Teresa told the Court there was no dispute, on the duties she was assigned by the Respondent. She left before her contract expired. She was not availed her phone and medical benefits. Her salary was paid to the last month.

25. She signed the contract of employment voluntarily. The contract had a start and end date. The Respondent had the discretion to extend the contract. It was not necessary to consult the Claimant. She received a letter saying there would be no extension.

26. The Respondent was not her first Employer. She understood employment is not forever. She asked for reasons for non-renewal. The contract did not require reasons to be given. There was nothing wrong with someone being appointed to act, after the Claimant left employment. She consulted for the World Bank Institute, almost immediately she left the Respondent. The consultancy lasted 1 year.

27. She received a warning letter on 29<sup>th</sup> June 2012, for alleged breach of protocol. The letter was there, even at the time she learnt about non-renewal.

28. She received the e-mails in the Supplementary Documents filed by the Respondent on 18<sup>th</sup> November 2013. One of her Colleagues Jacinta Okwaro complained that the Claimant was inflexible and did not accommodate different opinions.

29. Teresa wrote, noting that the complaint against her was the 3<sup>rd</sup> one made by staff, complaining about Claimant's way of doing things. She saw Thomas Yebei's exit interview. He complained that she was inflexible. She did not agree that the Respondent suffered as a result of her working relationship with her Colleagues.

30. The complaints were not discussed in Management meetings. They were not raised before the exit interviews. Yebei used very strong language against the Claimant, stating the thing he hated most at the Respondent, was having to work with the Claimant. He stated the Claimant, lorded it, over him.

31. The Claimant wrote to the Executive Director on the 26<sup>th</sup> June 2012. It was about the difficulties of a Supervisee. The Employee, Willis, felt the Claimant was not interested in his work. There was a redress mechanism. Teresa agreed it was wrong for her to use e-mail as a mode of supervising Employees, rather than use personal communication. Willis alleged the Claimant significantly contributed to his exit. Another Employee stated the Claimant should stop personalizing issues; the Claimant was not Ivy's Supervisor.

32. It had been brought to the Claimant's attention, as of the date she left employment that Employees were complaining about her. She still expected her contract would be renewed. Her record was perfect, until 1 month to the date she left employment. Teresa would not refuse to renew an Employee's contract, before she heard that Employee, or took the Employee through a disciplinary process. She rejoined FIDA in January 2013.

33. The prayer for 3 months' salary in lieu of notice is based on clause 13 of the Claimant's contract. She claims 2 years' salary based on her expectation of renewal of her contract for a period of 2 years. She worked for FIDA and the World Bank Group, after leaving the Respondent. She seeks damages. She received her Certificate of Service, after she demanded for it.

34. On redirection and further cross-examination, the Claimant testified there was legitimate expectation her contract would be renewed. The contract mentioned there was possibility of renewal, depending on satisfactory performance. It was not indicated to be non-renewable. She was never warned about performance. She had direct engagement with the Board. It was not strange to have direct communication with the Board. She had several such communications. Most of the exit interviews were brought to the attention of the Claimant, while the Claimant had already filed her Claim.

35. Exiting Employees complained about other Management Staff other than the Claimant. Yebei complained about the Executive Director, stating the Executive Director was hands-off. He stated terms and conditions of employment were quite poor. The fifth interview had an Employee complain about lack of proper redress mechanism. He complained about the Finance Manager. 16 Employees exited when the Claimant was in employment. Only 5 exit interviews were exhibited before the Court. She confirmed she was Yebei's Supervisor, and Yebei referred to her, in his complaint. She prays the Court to grant the Claim.

### **Respondent's Case:-**

36. The Respondent filed its Statement of Response 8<sup>th</sup> February 2013. It is accepted the Claimant was employed by the Respondent as Deputy Executive Director and Head of Programmes, for a period of 2 years, commencing 1<sup>st</sup> October 2010. Her contract was to end on 30<sup>th</sup> September 2012, unless renewed.

37. The Respondent did not terminate her contract, or dismiss her as alleged. The contract expired, and a decision was made not to renew. The decision not to renew was lawful and justified.

38. She was notified on 31<sup>st</sup> July 2012 that her contract would not be renewed. She enjoyed her benefits, until the last date of employment. Telephone allowance was only made available while the Claimant was on official duty. The decision to appoint another Person to act in Claimant's place was lawful.

39. She acted as part of a team, and wrongly seeks to take credit for the achievements of the team. She received a warning on 29<sup>th</sup> June 2012 for breach of protocol. Information given to fellow Employees and the Respondent's partners, on the Claimant's exit, was given in good faith, and was necessary in managing transition.

40. The Respondent needed time to consider World Bank Institute's request to have the Claimant retained as an Independent Consultant. The Respondent acted reasonably. Its decision not to renew Claimant's contract was fair and lawful. Her allegation about being shocked and devastated on being told her contract was at an end, and would not be renewed, was false and contrived. Her Certificate of Service was forwarded to her Advocates on demand. The Claim has no foundation.

41. Samuel Kimeu, also an Advocate of the High Court of Kenya, told the Court he had, at the time of giving evidence, worked for the Respondent as the Executive Director, for 6 years. The Claimant had a contract with the Respondent, with a commencement and expiry date. She was advised by the Respondent there would be no renewal upon expiry. The contract commenced 1<sup>st</sup> October 2010, to expire 30<sup>th</sup> September 2012.

42. Renewal of the contract was at the discretion of the Respondent.

43. She had a difficult working relationship with Colleagues. She had disciplinary issues. Around June 2012, she was given an assignment by Kimeu. She reported to Kimeu. She sidestepped Kimeu, and made report directly to the Board. Kimeu issued a warning letter to the Claimant. She did not appeal against the warning.

44. She was given notification of end of contract, 2 months before expiry. Clause 13 of the contract would apply only in event of premature termination. She had pending annual leave days she needed to utilize before the contract ended. She was paid her salary to the last date.

45. The Claimant wrote to the Board asking why her contract was not renewed. She wrote to development partners. This was not the way to do things. She did not have the authorization of the Respondent to write these letters.

46. Performance was not the lone consideration, in determining whether to renew. Relationship with Colleagues was another consideration. Renewal was not a matter of right. There was no bar to the Respondent engaging another Employee to assume Claimant's role, after the Claimant had left.

47. She was aware of challenges she faced throughout her 2 years of service. Exit Interviews of certain Employees of the Respondent, expressed their difficulties working with the Claimant. The Claimant was inflexible and unable to resolve issues amicably. In Claimant's own e-mail answering her Colleague Jacinta, the Claimant acknowledged other Employees left employment because of the Claimant's attitude. Yebei complained about his Supervisor, the Claimant herein, saying it was difficult to execute his work, due to Claimant's attitude. Other Employees raised similar complaints against the Claimant. On 26<sup>th</sup> June 2012, the Claimant wrote to Kimeu, referring to hurdles in her work. She stated a number of Employees had exited on her account.

48. The decision not to renew her contract should therefore not have come as a shock to the Claimant. The Respondent did not frustrate the Claimant with respect to the World Bank consultancy. Kimeu was waiting for direction from the Board. She took the World Bank position almost immediately she left employment.

49. She did not work alone for the Respondent, so as to singularly take credit for the achievements made by the Respondent. These achievements were the result of teamwork.

50. She does not merit 3 months' salary in lieu of notice. She was notified her contract would not be renewed, 2 months before expiry. She did not work for the Respondent after her contract expired, to justify payment of 2 years' salary. She was not dismissed by the Respondent, to justify compensation for

unfair dismissal. Her Certificate of Service was forwarded to her on demand.

51. The Executive Director told the Court on cross-examination that Respondent's Pleadings did not state the Claimant performed poorly. The only reason for her exit was that the old contract expired.

52. Kimeu did not agree that there would be reasonable expectation of renewal. The contract had a clause on extension. Extension depended on Claimant's satisfactory performance. This was to be gauged from the feedback given by Respondent's Employees, and through appraisal of the Claimant. Kimeu appraised the Claimant through a questionnaire. Appraisal documents were not availed before the Court. The Respondent filed exit interviews of Employees. It is not true that Claimant's appraisal records were deliberately omitted. She was not an excellent performer. The e-mails exhibited by the Respondent were mere samples of many records which captured Claimant's poor performance.

53. Kimeu testified the success of the Respondent depended on teamwork. He conceded the Claimant made some contribution in growing the Respondent. Certain donors came on board, during her tenure. The Deputy Director's position was abolished when the Claimant exited. The role of Head of Programmes was necessary and therefore, retained. There was no resolution of the Board availed to the Court, showing this position was correct. 8 days after the Claimant left, the Respondent employed someone to undertake Claimant's Head of Programmes' role.

54. Kimeu told the Court the contract did not provide for 2 months' notification which the Respondent issued. It was issued out of courtesy. The Claimant had 16 days of pending annual leave. She had not applied to utilize them. She had not applied for any other off-duty days. The Executive Director gave the notification to the Claimant at 1.00 p.m. and required her to hand over office by 5.00 p.m. the same day.

55. He explained that he was encountered with a difficult Employee. It is not true that the Respondent was sacking the Claimant, rather than notifying her about non-renewal. It was incumbent upon Kimeu to protect the Respondent. The Claimant had written unauthorized e-mail.

56. He believed she could be mentored. She had asked the Executive Director, in her e-mail of 28<sup>th</sup> September 2011, to be shown specifics and would mend. She had raised issues of complaining Members of Staff in the meetings of Senior Management Team [SMT].

57. It is true some Employees were hard-headed. It happens in all Organizations. Yebei stated Kimeu was overwhelmed and hands-off. It is not true that the Executive Director was overwhelmed, hands-off and failed to attend to complaints by Employees, as alleged by Yebei. There were about 10 to 20 exit interviews at the relevant period; only 4 were made available to the Court. It is not true that the un-availed interviews were favourable to the Claimant.

58. The Claimant's services were still required, 2 months leading to the end of her contract. Kimeu acted to protect the Respondent. The Claimant did not have access to the Office, after 31<sup>st</sup> July 2012. Her mobile phone was disconnected. Her medical cover was not discontinued immediately. Service Providers were advised her contract would end on 30<sup>th</sup> September 2012. She ceased to access official e-mail. The Respondent did not terminate her contract as of 31<sup>st</sup> July 2012; it only withdrew the benefits she did not require, as she was no longer actively working for the Respondent for the last 2 months. Kimeu explained that he does not for instance, access entertainment allowance while on annual leave. There was no sacking, but notification of non-renewal.

59. The Respondent advocates constitutionalism and accountability. Kimeu knows about fair labour practices and fair administrative action, under the Constitution of Kenya. The Respondent acted within the law.

60. Redirected, the Executive Director testified demand letter from Claimant's Advocates to the Respondent, focused on unfair dismissal. There was no decision made by the Respondent amounting to unfair dismissal; a fixed term contract came to an end, and there was no renewal.

61. It was necessary for the Respondent to give evidence showing the Claimant was not an exemplary Employee. There was no reason for her to expect renewal. Performance was not the sole consideration. There was no obligation to consult her before a decision was made not to renew. Appraisal was not relevant in her case. Performance is not entirely based on appraisal. The Claimant was aware of her challenges.

62. The Executive Director attempted to mentor the Claimant. He did not take disciplinary measure against her. The question about the abolition of Deputy Director's role is irrelevant to the issues in dispute.

63. The complaint against the Executive Director made by Yebei was isolated. Kimeu would have terminated Claimant's contract earlier, if he was being malicious; he waited to the end. Since the Claimant had executive powers, Respondent's position was that she needed to exercise such powers sparingly. After notification issued, the Claimant sent e-mail to donors saying she was leaving. She disregarded authority. Constitutional rights have limits. They are subject to the rights of others.

### **Final Arguments:-**

64. *Claimant's*: She submits that it is a common misconception among Employers, that an Employee cannot make an unfair dismissal Claim, under a fixed term contract. Non-renewal is essentially termination of employment, and all terminations must be accompanied by reasons, under the Employment Act.

65. She cites South African decisions, ***King Sabata Dalindyebo Municipality v. CCMA & Others, Case No. P437/03 2005, Labour Court Port Elizabeth, South Africa***, and ***Nkanyiso Eustace Buthelezi v. Municipal Demarcation Board, Labour Court of South Africa, Johannesburg, Case No. JA37/ 2002*** where it was held non-renewal of fixed term contracts constituted unfair dismissal. Some affected Employees were ordered to be reinstated, others to be compensated in these comparative decisions.

66. From our domestic jurisdiction, the Claimant relies on ***E&LRC Cause No. 593 of 2015, Nursing Council of Kenya v. County Government of Nairobi & 5 Others***, where it was emphasized that termination is unfair if the Employer fails to prove valid and fair reason, related to Employee's conduct, capacity or compatibility. In ***Ezekiel Nyangonya Okemwa v. Kenya Marine & Fisheries Institute [2016] e-KLR***, it was held an Employee could be granted damages for injured feelings, and for loss of employability. She also relies on ***Aviation & Allied Workers Union v. Kenya Airways Limited & 3 others [2012] e-KLR***, stating that she ought to have been informed of the reasons for non-renewal of her contract, just as much as Employees who exit on redundancy, are entitled to notification of redundancy. Lastly, the Court is urged to consider damages beyond 12 months' salary in compensation, because where contractual, constitutional and statutory violations are involved, as held in ***Industrial Court Cause Number 1073 of 2012 Abraham Gumba v. KEMSA***, the 12 months' salary ceiling can be broken.

67. *Respondent's*: Adopting the decision in ***Samuel Chacha Mwita v. Kenya Medical Research Institute [2014] e-KLR***, the Respondent submits a fixed term contract expires naturally on expiry date, and termination thereof will not necessarily constitute dismissal. Automatic renewal would undermine the very purpose of the fixed term contract, and revert Parties to indeterminate contract, as stated in ***Margaret A. Ochieng' v. National Water & Pipeline Corporation [2014] e-KLR***. The Court further stated fixed term contract has its own in-built termination notice, as the date when the contract expires, is known to the Parties from the very inception.

68. In any event, the Claimant failed in the leadership of her docket. She received warning letter. She did not show she legitimately expected renewal of her contract. In ***Rajab Barasa & 4 Others v. Kenya Meat Commission [2016] e-KLR***, the Court held that the expectation of the Employees that their fixed term contracts would be renewed, had no basis as there was no express, clear and ambiguous promise given by the Employer on renewal. The Employer retains the discretion, even where there is a clause allowing for renewal. The remedies sought are not available to the Claimant.

69. Lastly the Respondent submits the decisions cited by the Claimant are inapplicable to her case. **Nkanyiso** related to dismissal of an Employee during the currency of a fixed term contract; **Okemwa** was taken through a disciplinary process; while **Nurses Union, Aviation Union, and Gumba** similarly related to Employees who were dismissed after disciplinary proceedings.

**Issues:-**

70. These, as understood by the Court, are whether:

a) *The Claimant was entitled to legitimately expect renewal of her contract.*

b) *The Claimant's existing contract was terminated fairly and validly.*

c) *The Claimant merits the equivalent of 12 months' salary in compensation for unfair dismissal; notice pay of 3 months; 2 years' salary for non-renewal of contract; general damages; costs and interest.*

**The Court Finds:-**

71. It is agreed the Claimant was employed by the Respondent as Deputy Executive Director/ Head of Programmes, for a fixed period of 2 years, effective 1<sup>st</sup> October 2010, ending 30<sup>th</sup> September 2012.

72. The Offer of Employment is dated 1<sup>st</sup> September 2010. Her consolidated salary was Kshs. 270,000 during the period of probation, and Kshs. 300,000 on confirmation. She completed 3 months of probation, and was confirmed on 3<sup>rd</sup> January 2011. She earned Kshs. 300,000 consolidated monthly salary, up to the date she left employment.

73. Clause 2 of her contract states, ‘ ‘ *further extension of this contract shall be subject to satisfactory performance and on-going requirement of your services by TI-Kenya.* ’ ’

74. It is the common evidence of the Parties that on 31<sup>st</sup> July 2012, she was issued a ‘Notification of the End of Your Fixed Term Contract’ by the Respondent.

75. The Notification, authored by Samuel Kimeu, Executive Director, states:

*‘I would like to bring to your attention the impending expiry of your contract of employment due on 30<sup>th</sup> September 2012, after 2 years of service, and notify you that TI-Kenya will not be offering you a renewal of this contract.*

*In the circumstances, TI- Kenya has decided to allow you time off, effective 1<sup>st</sup> August 2012, to exhaust any outstanding leave days and to take extra days offered, to plan for your career after the expiry of this engagement with us. As per our records, you have 14 days of untaken leave so far, which are set to increase to 16 days by the end of your contract. Note that during this period, until 30<sup>th</sup> September 2012, your salary and all other benefits fully apply.*

*Kindly arrange to hand over to the undersigned in accordance with the usual checklist and as guided by the Human Resources and Administration Officer, by Tuesday 5.00 p.m. on 31<sup>st</sup> July 2012.*

*I take this opportunity, on behalf of TI-Kenya to appreciate your service as Deputy Executive Director and Head of Programmes, and wish you all the best in your future undertakings.’ ’*

76. The Claimant therefore left employment on 31<sup>st</sup> July 2012.

[a]. Legitimate expectation.

77. The Claimant's position is that her outgoing contract allowed for renewal. Clause 2 of her contract created possibility of renewal, depending on satisfactory performance and ongoing requirement of Claimant's services by the Respondent.

78. Teresa's position is that she did a stellar job for the Respondent. She mobilized donor resources; she sustained partnerships with donor agencies; she brought on board new partners who funded new programmes; and oversaw growth of the Respondent. There was feedback from the Respondent indicating she discharged her role excellently. Her services were still needed by the Respondent. Even as she was being notified there would be no renewal, she had pending assignments, such as the conference with the World Bank. After termination, another Officer was designated to execute her role. She therefore legitimately expected there would be renewal.

79. The Respondent answers that the Claimant was demonstrably challenged in discharge of her role throughout the 2 years, and she was alive to these challenges. Fellow Employees expressed their frustration and inability to work with the Claimant. She was inflexible, and unable to resolve workplace differences amicably. Employees exited the Respondent, on account of the Claimant's shortcomings. The Claimant referred in her e-mail of 26<sup>th</sup> June 2012, to hurdles in her work. While Kimeu conceded the Claimant did achieve something for TI-Kenya, he was quick to add most of the achievement was as a result of teamwork. Teresa was aware of staff exiting on her account. The position of Deputy Director was phased out, while the role of Head of Programmes was preserved and refilled by another Officer. There was no reason for the Claimant to legitimately expect renewal.

80. There is no legislation in Kenya on the principle of legitimate expectation in renewal of fixed term contracts. In resolving disputes on the subject, the Court has to rely largely on decided cases. There are quite a number of decisions emerging on the subject, from our vibrant Employment & Labour Relations Court.

81. In other jurisdictions, the concept has been clarified through legislation. Perhaps our Employment Act ought to be amended, to incorporate the concept of legitimate expectation of renewal of fixed term contracts, particularly because this has become a recurrent cause of employment disputes.

82. Section 186 [1] [b] of South Africa's Labour Relations Act No. 65 of 1995, defines dismissal from employment to include where- an Employee reasonably expected the Employer to renew a fixed term contract of employment on the same or similar terms, but the Employer offered to renew it on less favourable terms, or did not renew it. Non-renewal of the fixed term contract therefore could under this statute, amount to unfair dismissal.

83. This concept, and the concept of constructive dismissal, as suggested by this ***Court in Nairobi [IC] Cause Number 611 [N] of 2009 between Maria Kagai Ligaga v. Coca Cola East and Central Africa Limited***, need to be legislated. These concepts are recurrent sources of employment disputes. They cannot adequately be dealt with under the existing Employment Act.

84. Most decisions of the Employment and Labour Relations Court of Kenya hold fixed term contracts, carry no expectation of renewal.

85. In ***Rajab Barasa & 4 Others v. Kenya Meat Commission [citation above]***, it was held that fixed term contract will not be renewed automatically, even when there exists a clause, allowing for such renewal, such as Clause 2 of the Claimant's contract in the present dispute.

86. In ***IC at Nairobi, Cause No. 1541 of 2010, between Bernard Wanjohi Muriuki v. Kirinyaga Water & Sanitation Company Limited & Another***, the Court upheld the discretion of an Employer in renewal of fixed term contracts, holding the Employer had no obligation to give reasons why renewal should not be granted. It was the position of the Court that to require an Employer to give reasons, would be the same thing as requiring an Employer to give reasons to a potential Employee, on rejecting that Employee's job

application. A similar holding obtained, in ***George Onyango v The Board of Directors of Numerical Machining Limited & Others [2014] e-KLR***. The common thread in these decisions is that once a fixed term contract has expired, Parties' can only engage thereafter on a *tabula rasa*. The general principle is that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.

87. The discretion of an Employer to renew or not renew a fixed term contract can however be challenged on limited grounds.

88. ***Ruth Gathoni Ngotho-Kariuki v. Presbytery Church of East Africa & Another [2012-e-KLR]*** is one of our decisions where the decision not to renew, was successfully challenged. The contract stipulated the Employee would be given 3 months' notice of non-renewal, which was not given. It was held she had established legitimate expectation of renewal. In a recent ruling, the Court in ***John Ogutu Ragana v. Bandari Sacco Limited [2017] e-KLR*** adopted this judicial thinking, finding the Employee to have reasonable expectation of renewal, after he had gone on working, months after his fixed term contract expired.

89. The Court similarly explained in ***Margaret Ochieng' v. National Water and Pipeline Corporation*** cited by the Respondent, that whereas Employers retain the prerogative on renewal of fixed term contracts, the decision not to renew can be challenged on limited grounds. This was illustrated in the case of Ochieng', through a regional decision in ***United Nations Appeals Tribunal [UNAT], Case Number 2010-125 between Frenchon v The Secretary- General of the United Nations***. Where the actions of the Employer lead the Employee to believe the contract would be renewed; where the decision not to renew is based on improper motive; or where there are countervailing circumstances, the prerogative of the Employer is challengeable.

90. ***Frenchon*** was employed on a fixed term contract by the International Criminal Court for Rwanda [ICTR] in Arusha, Tanzania. She sustained service-incurred injuries before her contract expired. She was compelled to extend her sick leave. The Employer let her fixed term contract run out, and did not renew on expiry. UNAT held:-

- i. The Employee's fixed term contract was ended because of her service-incurred injuries.
- ii. The Employee's fixed term contract was in fact terminated, by the Employer.
- iii. It was disingenuous of the Employer to argue that the contract was allowed to run until the end of the term, and was not renewed on medical grounds.
- iv. The decision was informed by improper motive.
- v. Non-renewal was separation, initiated by the Employer.
- vi. Employer was intent on avoiding its legal obligations.

91. The burden of proof, in legitimate expectation claims, is always on the Employee. It must be shown that the Employer, through regular practice, or through an express promise, leads the Employee to legitimately expect there would be renewal. The expectation becomes legally protected, and ought not to be ignored by the Employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire or hope. It is a principle based on a right, grounded on the larger principles of reasonableness and fair dealing between Employers and Employees. The Employee must demonstrate some rational and objective reason, for her expectation. The representation underlying the expectation must be clear and unambiguous. The expectation must be induced by the decision maker. The decision maker must have the authority to renew. Repeated renewals, extended service beyond the period provided for in the fixed term contract, and promise of renewal, are some of the elements that would amount to objective reasons underlying expectation of renewal. The presence of these elements however, is not to be taken as conclusive proof of legitimate expectation.

92. In *SA Rugby Players Association & Others v. SA [Pty] Limited & Others [2008] 29 ILJ, 2218 [LAC]*, 3 rugby Players had been given fixed term contracts to play for South Africa in the world cup. They played and their contracts expired. They filed claims arguing they were entitled to be appointed to play again, based on their good performance at the past world cup.

93. The Commission for Conciliation, Mediation and Arbitration [CCMA, which is a body which deals with labour disputes before they are escalated to the Labour Court], accepted that the Players had shown legitimate expectation, and non-renewal amounted to unfair dismissal, under Section 186 [1] [b] of the Labour Relations Act.

94. The decision was appealed in the Labour Court. It was varied. 2 of the Players were found to have no reasonable expectation of renewal. It was concluded non-renewal of their contracts did not amount to dismissal. It was however concluded the other Player had legitimate expectation, and non-renewal, amounted to dismissal.

95. The dispute found its way to the Labour Court of Appeal, which is a specialist appellate body, not a generalist body, dealing specifically with Labour disputes. It was held:-

a) Because the Employees' fixed term contracts contained clear statements that they should not expect renewal, it was demanded of them to present more than feeble evidence, in justifying legitimate expectation.

b) The fixed term contracts- for a specific event [world cup] - could do no more than place the Employees in a better position, when future contracts were negotiated.

c) Should they have been selected again, the Players would have played under materially different terms.

d) Non-renewal did not amount to dismissal.

e) Failure to communicate intention not to renew, in the case of the 3<sup>rd</sup> Player, was held not to mean the contract would be renewed. The contract itself did not provide for renewal.

96. This decision, and the South African decisions cited by the Claimant in her Submissions, while not binding to this Court, and while based on interpretation of existing legislation, the equivalent of which we do not have In Kenya, offer some useful comparative jurisprudence on non renewal of fixed term contracts and legitimate expectation.

97. The Claimant's contract provided that "*further extension of this contract shall be subject to satisfactory performance and ongoing requirement of your services by TI-Kenya.*" There was a promise for renewal, so long as 2 conditions were satisfied. One, the Claimant's performance was satisfactory, and two, the Respondent still required her services. She argues this clause was a promise. She fulfilled the condition for satisfactory performance. Her services were still required.

98. On satisfactory performance, the Court has not been able to find evidence contradicting the Claimant's position. She mobilized resources, brought in new donors, and started new programmes. Kimeu coyly admitted she played her part, in growth of the Respondent.

99. The exit interviews by Employees cannot in the view of the Court be taken as a measure of the Claimant's performance. There were no appraisals carried out by Kimeu, availed to the Court, showing the Claimant performed below given targets. The Executive Director alluded to the presence of appraisals, but provided the Court with no documents, relating to such appraisals. In her letter to the Board of Directors dated 1<sup>st</sup> August 2012, the Claimant reveals there was one performance appraisal carried out in the year 2011. She wrote to the Executive Director asking for results of the exercise. There was no response. She wrote reminders. There was no response. It would therefore be difficult to argue against the Claimant's position that she met the condition of satisfactory performance, contained in clause

2 of her outgoing contract.

100. The exit interviews contained general comments, by Employees who were leaving the Respondent, and who were not in a position to appraise the Claimant's performance. They were not tools for measurement of Claimant's performance, but exiting Employees' untested views on the Organization they were exiting as a whole. It was disclosed that one Employee, indeed, stated the Executive Director was overwhelmed, hands-off, unable to attend to complaints, and afraid of his Deputy [the Claimant]. Kimeu explained there were hard-headed Employees in any Organization, and these comments about him by Yebei, did not reflect his poor stewardship of TI-Kenya. Why then would the same exit interviews be turned into performance indicators in the case of the Claimant?

101. The correct measure of the Claimant's performance, would in the absence of an objective appraisal, be taken from her achievements with the donors and partners. She may have been a forceful individual, unlikeable to some Employees, and feared by others, but her achievements and satisfactory performance, going by the material on record stood out. The exit interviews were not meant to appraise Claimant's performance; they were meant to record exiting Employees' general experience with the Respondent. The Employees were asked, as they exited, what they would change, not who they would change, to make TI-Kenya a better place. The interviews were perhaps, instrumental in phasing out of the Deputy Executive Director's docket post-the Claimant. Some of the Employees had suggested the Respondent would be better off having one centre of executive power. It was suggested by Yebei that the Deputy could overshadow the Executive Director, resulting in a dysfunctional Organization. The exit interviews may have been useful in reorganization of the Respondent, in consolidating the executive power of the CEO, but in the view of the Court, were not intended as measurement tools of individual performance. To add on to the grounds justifying non-renewal, the Executive Director slammed the Claimant with a warning letter, to blemish her record at the very end, suggesting she sent an e-mail directly to the Board and its Chairman, rather than go through him. The Claimant explained, and the Court accepts her explanation, that she had done this before without warnings. She had communicated directly with the Board Members, and copied such communication to the Executive Director. It is difficult to see how this would amount to insubordination or poor performance. The incident took place 1 month before the Claimant's contract was terminated, and 3 months before the end of the fixed term contract. A reasonable and cautious man would be forgiven for thinking the Executive Director was laying the basis, building the case, for non-renewal through this warning letter. In any event the warning was stated to be a first warning, over which the Claimant apologized, and unless repeated, should not have formed the basis for any premature termination, or non-renewal decision.

102. Even as her fixed term contract was approaching its end, the Claimant was still engaging with key Partners such as the World Bank Institute. She was due to hold a meeting with the World Bank. The World Bank was a key partner of the Respondent, and seems to have expected the Claimant would have gone on serving. It was little wonder that even on termination, the World Bank Institute sought to have the Claimant continue working as an Independent Consultant.

103. The pursuit of the Claimant by the World Bank Institute, even after termination, would suggest to the Court first, that her performance with the Respondent was satisfactory. A major partner of the Respondent would not have been chasing after a poor performer. Second, the continuing demand for Claimant's services within Respondent's partners, would suggest she would reasonably expect her contract to be renewed, to sustain continuity of the good relationship she had established with the donors and partners. The partners referred to a Coalition, in which the Claimant had the institutional memory. She was central to the joint work of the Respondent and its partners. The Executive Director initially withheld approval of Claimant's engagement as a Consultant. When he finally gave his endorsement, he wrote that Claimant's engagement with the World Bank Institute would facilitate the partnership and help in achievement of mutual objectives. If this was a genuine sentiment, it would suggest the Claimant performed satisfactorily; and would have reason to expect renewal. The Claimant could have continued to help in achievement of mutual objectives from within the Respondent.

104. Of course the Respondent was not beholden to the wishes or expectations of its partners, but the actions of these partners, their reaction to non-renewal of Claimant's contract, given their close working

relationship with the Respondent, comprise objective evidence of the Claimant's legitimate expectation. The Respondent continued to place the Claimant at the centre of its development coalition, weeks before her contract was to expire.

105. The Court is satisfied the Claimant had legitimate expectation her contract would be renewed. It was not merely a wish, a hope or a desire for continuity; it was legitimate expectation, rooted in the contract of employment. There was a promise for renewal, subject to fulfillment of certain conditions. These conditions were fulfilled. The Claimant performed satisfactorily. She was appointed as an Independent Consultant for a key partner. There is no doubt her services were still required by the Respondent. Another Employee took up the position of Head of Programmes 8 days after the Claimant was ejected.

106. *The answer to the 1<sup>st</sup> issue is that yes, the Claimant had reasonable and objective reasons to legitimately expect renewal of her contract.*

### [b] Unfair termination

107. Was the outgoing contract terminated fairly? The Claimant was issued Notification of the End of Fixed Term Contract, on 31<sup>st</sup> July 2012. She was asked at 1.00 pm, to clear from Office, and hand over by 5.00 p.m. the same day. She had 2 months left to the end of her contract. She testified she had not sought to take pending annual leave of 14 days. Kimeu wrote that she had 14 days of pending leave, as of 31<sup>st</sup> July 2012, which would increase to 16 days by end of the contract on 30<sup>th</sup> September 2012. No leave schedules were availed to the Court to enable it understand these increasing pending annual leave days. If the Claimant had not applied to take annual leave days, why did the Respondent grant her 14 days, then 16 days and even offered 'extra days to plan your career'? This offer for extra days sounded like sarcasm. Either Party had the option to terminate the contract under clause 13 of the contract, through notice of 3 months, or payment of 3 months' salary in lieu of such notice. Termination was abrupt and insensitive.

108. Although she continued to receive her salary up to the end of the contract period 30<sup>th</sup> September 2012, certain benefits were withdrawn from the Claimant. She was denied her right to work to the end of her contract. Her contract entitled her to much more than simply being on the payroll. It is not sufficient that she was paid her salary to the end. Colleagues were called to a meeting, and told she was leaving. Her e-mail was locked. She was treated like a plague that the Respondent had to get rid of, on 31<sup>st</sup> July 2012, rather a Professional Colleague whose contract was coming to an end on 30<sup>th</sup> September 2012. It cannot be believed that the Respondent merely withdrew utilities the Claimant no longer needed, rather than terminated her contract. When the World Bank Institute sought to have the Claimant retained as an Independent Consultant, the Respondent dithered and only gave its endorsement, after the World Bank Institute gave an ultimatum.

109. There were allegations by the Respondent that the Claimant was unable to work with Colleagues. An Employee's incompatibility is a fair termination reason under Section 45 [2] [b] of the Employment Act 2007. In ***Dede Esi Annie Amanor Wilks v. Action Aid International [2014] e-KLR***, it was observed that Employers are entitled to have harmonious working relationships within their enterprises. They are at liberty to weed out trouble-makers, eccentrics and disruptive Employees. Incompatibility is the inability on the part of the Employee to work in harmony with other Employees, or to fit in the Employer's corporate culture.

110. These allegations, particularly the ones raised in the exit interviews, suggested the Claimant was deemed incompatible. This was however, not mentioned in the Notification which served as a termination letter. She was never granted a hearing on the charge of incompatibility. It would therefore not be a fair reason under Section 45 of the Employment Act. It was never established as a termination reason.

111. Other probable reasons for termination are insubordination and poor performance. Insubordination was alluded to in the warning letter issued by Kimeu. It was also alleged by Kimeu that the Claimant wrote directly to Respondent's partners on being notified there would be no renewal. She did so without authority. These reasons were not established through a disciplinary hearing and were not in any event,

mentioned in the termination letter.

112. The Respondent had an obligation to respect the Claimant's right to serve her full term, in accordance with the terms and conditions agreed between the Parties, and with due regard to the law governing that contract. There was an obligation to treat the Claimant fairly up to the very end. Fair dealing, between Employers and Employees, is not to be ignored on the ground that a fixed term contract is anyway coming to an end. The departure of the Employee is not to be hastened. The Claimant was hastily pushed out; and treated like one who had committed an employment offence, but was not told what her offence was. What did the Respondent stand to lose by holding out until 30<sup>th</sup> September 2012?

113. *The Court agrees with the Claimant that her outgoing contract was terminated by the Respondent prematurely and unfairly.*

[c] Remedies.

114. The Claimant prays for 3 distinctive forms or economic reparation. She prays for the salary she anticipated would be paid to her for 2 years computed at Kshs. 7,200,000; she prays for compensation the equivalent of 12 months' salary at Kshs. 3,600,000; and general damages.

115. Non-renewal of her contract as submitted by her, and approved by the Court, amounted to dismissal of employment. It is to be treated as an unfair dismissal, for which a remedy is to be obtained under Section 49 of the Employment Act 2007 and Section 12 of the Employment and Labour Relations Court Act.

116. The Court is of the view redress for non-renewal of the contract, is not to be treated as a different cause of action, where separate reparation is made. Remedies for wrongful dismissal and unfair termination under Section 49 [1] [3] and [4], are given based on the criteria set under these provisions.

117. Once it is concluded non-renewal amounted to unfair dismissal, the Court applies Section 49 [4] [f] which states the Court may take into account, "*the reasonable expectation of the Employee, as to the length of time for which his/ her employment might have continued but for the termination.*"

118. Deprivation of renewal of a contract is to be redressed under Section 49 [4] [f], and treated as an aspect of the overall wrongful or unfair act of the Employer, rather than a disparate act, requiring a separate remedy.

119. The Court does not think ***Ezekiel Nyangoya Okemwa v. Kenya Marime Fisheries & Research Institute*** is applicable to the current dispute in the way submitted by the Claimant. The Claimant did not suffer loss of, or diminished employability. She was in demand as analyzed above, and found her way back into the lucrative employment world of international organizations, and eventually to FIDA-Kenya. She was in a 2 year fixed term contract. Okemwa, unlike the Claimant was a Public Servant who was taken through an undeserved criminal process for about 10 years; who lost out on employment in the international labour market as a result of the criminal trial; and who was for years on end moved in circles before he learnt his term-indefinite contract had been terminated. Teresa and Okemwa were not similarly placed. The Court nonetheless stated although Okemwa suffered multiple violations, there was no justification in splitting his cause of action and pursuing multiple remedies. The ***Aviation Union*** decision was overturned by the Court of Appeal, and related to a collective redundancy process. It is not clear in which way, the Claimant finds it useful or usable, in the current context.

120. There is no guarantee that the Claimant's contract, if renewed, would have been for a 2- year period. As held in the South African Rugby case, renewal could have been on materially different terms and conditions of employment. It is not known even if her contract was renewed for 2 years, that, she would have served to the end of those years. There is no reason to believe she would have gone on earning Kshs. 300,000 per month. What she would have earned, for whatever period after 30<sup>th</sup> September 2012, is incalculable. It is possible she would only continue serving as Head of Programmes, the Deputy Executive Director's docket having been phased out. Even though she legitimately expected renewal, it is

not proper that she draws the terms and conditions of service of the expected contract in her mind, and makes a claim of future salary, based on the portrait she draws in her mind. In ***Court of Appeal at Nyeri, CA No. 25 A of 2015 between Elizabeth Wakanyi Kibe v. Telkom Kenya Limited [2014] e-KLR*** the Court held that Employees have the obligation to move on, and look for fresh employment after termination, and not sit back in the hope of enjoying anticipatory remuneration. Employment remedies must be proportionate, and Employees discouraged from replicating employment wrongs and multiplying remedies. The Court upheld these principles in ***Industrial Court Cause [Nairobi] Number 611 [N] of 2009 between Maria Kagai Ligaga v. Coca Cola East & Central Africa*** [ see also subsequent ***Civil Appeal between Coca Cola East & Central Africa Limited v. Maria Kagai Ligaga [2015] e-KLR***]. Employees are expected, under Section 49 [4][1] of the Employment Act to reasonably mitigate their losses. The Claimant secured employment immediately she left the Respondent. She was earning income from other Employers, in the 2 years she states she would have been working, and earning a salary with the Respondent, after 30<sup>th</sup> September 2012.

121. Redress for non-renewal must therefore be at the discretion of Court, guided by the cap of 12 months' salary compensation, prescribed under Section 49 of the Employment Act. It is not a separate cause of action, calling for a separate remedy, outside the statutory cap for compensation for unfair dismissal. The Claimant has not demonstrated to the Court that hers is a case, where statutory capping can be broken.

122. Likewise, there is no foundation for the prayer for general damages. The Claimant has not established what injury or violation, outside the termination of her contract, and non-renewal of that contract, she sustained to warrant general damages separately. The Court has in the past suggested the statutory ceiling could be broken, and general damages granted, where the employment wrong involves breach of fundamental rights such as the right not to be discriminated against on the grounds or pregnancy or pregnancy-related grounds. If the Respondent had for instance declined renewal of the Claimant's contract for pregnancy related reasons, or other forms of employment discrimination under Section 5 of the Employment Act 2007 and Article 27 of the Constitution, the Court would be entitled to consider damages beyond the statutory capping in compensation for unfair termination, because the violation involves much more than the rights created by the contract and the legislation governing that contract. The Claimant testified, and states at paragraph 15 of her Statement of Claim, that the Respondent violated her constitutional rights. Rule 7[3] of the Employment & Labour Relations Court Rules 2016, confirms that a Party may seek the enforcement of any constitutional rights and freedoms or any constitutional provision through a Statement of Claim, or other Suit filed before the Court. The Court is entitled to consider remedies under Article 23 of the Constitution, which would include damages beyond any statutory capping. While the Court finds the Respondent acted unfairly and unlawfully, the Claimant did not demonstrate that the remedies granted under legislation are insufficient in redressing the violation, so as to require the Court to look outside the Employment Act 2007, and the Employment and Labour Relations Court Act.

123. The last prayer for a compensatory award is merited. There were wrongful and unfair acts on the part of the Respondent, in refusal to renew the Claimant's contract, and in the manner of terminating the outgoing contract. ***The Court is convinced the Claimant merits, and is hereby granted, the equivalent of 12 months' salary in compensation for unfair termination, at Kshs. 3,600,000.***

124. Notice of 3 months, or 3 months' salary in its lieu, was provided for under clause 13 of the contract. The Claimant left on 31<sup>st</sup> July 2012, rather than 30<sup>th</sup> September 2012. She however was on the payroll up to 30<sup>th</sup> September 2012. She was entitled to 3 months' notice pay, but as she was retained in the payroll for 2 months, and received her full salary, she ought to be contented with the balance of 1 month salary in lieu of notice. She is granted 1 month salary as the shortfall of the 3 months' notice she would have earned, had her contract been terminated under clause 13. ***She is granted notice pay of 1 month, at Kshs. 300,000.***

125. Certificate of Service has already issued, and nothing turns therefore on that prayer.

126. ***Costs to the Claimant.***

127. ***Interest allowed at 14% per annum from the date of Judgment, till payment in full.***

IN SUM, IT IS ORDERED:-

***a) It is declared non-renewal of the Claimant's contract amounted to unfair termination of employment.***

***b) The outgoing contract was terminated unfairly.***

***c) The Claimant is granted the equivalent of 12 months' salary for unfair termination at Kshs. 3,600,000 and 1 month salary in lieu of notice at Kshs. 300,000- total Kshs. 3,900,000.***

***d) Costs to the Claimant.***

***e) Interest allowed at 14% per annum, from the date of Judgment, till payment in full.***

Dated and delivered at Mombasa this 17<sup>th</sup> day of March 2017

James Rika

Judge