



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 359 OF 2016**

**BETWEEN**

**JEREMIA MWIHIA NJAU.....CLAIMANT**

**VERSUS**

**WARSTILA EAST AFRICA LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Munee Katu & Associates Company, Advocates for the Claimant*

*Kibungei & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 19<sup>th</sup> May 2016. He states he was employed by the Respondent as an Electrical Technician, on 8<sup>th</sup> April 2013. He was promoted to the position of Operator 1, and his salary raised to Kshs. 73,797. His contract was terminated by the Respondent through a letter dated 13<sup>th</sup> April 2016. The reason for the decision is given in the letter. There was an incident at the Respondent's workplace on 26<sup>th</sup> January 2016, which led to the damaging of the Respondent's Auxiliary Boiler.

2. The termination letter alleges the Claimant failed to report to his Supervisor that he was having a problem with the Boiler. The problem would have been avoided had the Claimant informed his Supervisor and the rest of the Shift Operators. The Claimant was alleged to have issued instructions to a Trainee Operator to shut down the feed water pump while the Boiler was still running. He failed to disseminate information from the Control Room to the rest of the team. The actions and omissions by the Claimant were said to have led to damage of the Auxiliary Boiler and major loss to the Respondent. The Respondent stated it no longer had trust and confidence with the Claimant. His last working day was given as 15<sup>th</sup> April 2016.

3. The Claimant feels termination was unfair. He was not paid terminal dues. He was issued a letter to show cause within 24 hours, why he should not be disciplined; disciplinary hearing was not conducted fairly; and the Claimant did not have warnings leading to termination. He prays for Judgment against the Respondent for:-

- a) 2 months' salary in lieu of notice at Kshs. 147,594.
- b) Days worked and not paid at Kshs. 50,316.
- c) Overtime at Kshs. 82,755.
- d) 12 days of outstanding annual leave at Kshs. 20,000.
- e) Pay in lieu of leave at Kshs. 16,772.

f) Shift allowance at Kshs. 2,348.

g) Compensation for the remainder of the contract period from 16<sup>th</sup> April 2016 to March 2021 at Kshs. 4,390,921.

h) 12 months' salary in compensation for unfair termination at Kshs. 885,564

Total...Kshs. 5,596,271

i) Certificate of Service to issue.

j) Costs and Interest.

4. The Respondent filed its Statement of Response which is dated 23<sup>rd</sup> June 2016. It is not clear from the stamp of the Court when the Statement of Response was received at the Court Registry.

5. It is conceded the Claimant was employed by the Respondent. He last held the position of Operator 1. He was with other Employees, assigned the task of operating the Auxiliary Boiler on 26<sup>th</sup> January 2016. He was in charge of the Control Room. All operations were monitored from there. The Claimant was to disseminate information from there. He received information from the Operator about Auxiliary Boiler having high water alarm. Without confirming the veracity of the report, the Claimant gave instructions for closure of the feed pump. He did not escalate the problem to his Supervisor until 14.59 hours. By then the Boiler was already damaged as a result of running dry, after the feed pump had been turned off. He carelessly and improperly discharged his task. The Respondent suffered loss of Kshs. 37,009,580 in repair and rehabilitation of the Boiler. He was heard in accordance with the Employment Act 2007 and the Respondent's Human Resources Handbook. Termination was fair. Terminal dues would be paid on clearance.

6. The Claimant testified on 15<sup>th</sup> December 2016 as did Respondent's Human Resources Officer Salome Ngeene. Respondent's Contract Manager Bautista Carlo testified on 17<sup>th</sup> March 2017 and 29<sup>th</sup> March 2017. Operations Manager Muriithi Huphrey Reche gave evidence on the latter date when hearing closed.

7. The Claimant told the Court he is presently unemployed. He was given a contract dated 15<sup>th</sup> October 2013, which was stated to be co-terminus with the contract between the Claimant and Kengen Company Limited. His last salary was Kshs. 73,797.

8. Duties were allocated on monthly shifts. He was issued with a letter to show cause why he should not be disciplined. He was told he did not take notes and raise questions with the Auxiliary Operator. He replied to this letter.

9. On 4<sup>th</sup> February 2016, he was advised the Human Resources Officer, Salome, wanted to see the Claimant. He availed himself and was taken to the Contract Manager's Office. He was told the meeting related to the same incident subject matter of the letter to show cause. The meeting was not finalized. The Claimant went on working after it was adjourned.

10. He was off-duty for 4 days, reporting back on 8<sup>th</sup> February 2016. He worked up to 13<sup>th</sup> April 2016 when he was issued with a letter of termination.

11. Letter to show cause issued against 3 Employees. It was only the Claimant whose contract was terminated.

12. He was not advised to have company of another Employee at the disciplinary hearing. He was not notified there was going to be a disciplinary hearing.

13. Communication at the workplace was through radio. Everyone in the shift could hear what each Employee said over the radio. The Claimant was in the Control Room. He was not to leave the room without a Reliever. The Boiler was located at another place.

14. On cross-examination, the Claimant stated he holds B.Sc. in electrical engineering from Makerere University. He completed the course in 2012. He worked for Kengen before working for the Respondent. His first appointment with the Respondent was Electrical Technician. He was trained for, and familiar with, Operator's role.

15. His contract had termination and summary dismissal clauses. It had a co-terminus clause. It would expire with the expiry of the contract between the Respondent and Kengen, in the year 2021.

16. The Claimant was in the Control Room on 26<sup>th</sup> January 2016. His Shift Supervisor had gone out. Operation's Manager Office was not visible from the Control Room. The Supervisor had a radio. The Claimant communicated through radio.

17. At 1.00 o'clock the Claimant found the Boiler temperature was decreasing. He reported to the Supervisor by word of mouth. When encountered with a problem, he was to report to his Supervisor. He was not to try and resolve the problem without engaging the Respondent.

18. The Claimant would be willing to receive 2 months' salary in lieu of notice, from the Respondent. It is not true that he was issued with a cheque for the amount which he declined. He was aware the Respondent indicated it would pay his terminal dues, upon the Claimant clearing. Joseph Gitau was the Auxiliary Operator. The Claimant did not know Gitau was a Trainee and did not refer to him as such. Gitau told the Claimant he shut the feed water pump. It was not true that the Claimant was to receive and relay all information from the Control

Room. Everyone heard the information on radio. It was not the duty of the Claimant to inform his Supervisor that Gitau had shut the feed water pump.

19. The Claimant was informed about the purpose of the meeting of 4<sup>th</sup> February 2016. The minutes indicate it was a disciplinary hearing. He signed the minutes. The Boiler stopped at 15.01 hours. There was a fire alarm at 15.06 hours. There was mild smoke. He was not able to say if this was from the exhaust or from a fire. There was no causal link between this and the stopping of the Boiler.

20. Redirected, the Claimant told the Court the minutes of the 4<sup>th</sup> February 2016 meeting, were recorded after the meeting. He was not notified about the agenda. He was not given sufficient time as required under the Disciplinary Procedures. He was qualified to work in his position, and gave all his supporting documents to the Respondent, upon application for the job. He would accept notice pay from the Respondent, but this would not satisfy his Claim. He urges the Court to allow his Claim in its totality.

21. Human Resources Officer, Salome, told the Court all Employees involved with the Boiler on the material day were summoned by the Respondent. The incident was investigated internally. There was an Incident Report. All Employees implicated were asked to explain.

22. The problem was caused by Employees' negligence. Amos Mafundo was to start the Boiler with the Trainee. After he did so, he was instructed to attend to other duties. He was suspended by the Respondent for 15 days.

23. Gitau was a Trainee and in the employment of Kengen. No action was taken against him. He was being shown how to start the Boiler. It was his first time.

24. Amos Mokuwa was Shift Supervisor. He should have returned and checked on the Boiler progress. Daniel Nyambu was part of the Shift. He was given a warning.

25. The Claimant monitored all information. He was to liaise with the Supervisor. He failed to do so. Amos was at the Operation Manager's Office. He received no information. The Claimant communicated to Gitau the Trainee as shown at page 79 of Respondent's Bundle of Documents. Gitau told Salome he was asked by the Claimant to turn off the feed water pump. He was new and acted on the advice of the Claimant. The Boiler went on fire because there was no water.

26. Salome called the Claimant on phone and informed him there would be a disciplinary hearing the following day. He was advised to go with a Colleague of his choice. He attended the hearing in the company of a Colleague, Emmanuel Juma. The Claimant did not complain that notice was too short.

27. Experts from the Boiler Manufacturer in Finland were consulted. The Boiler had to be replaced at a cost of Kshs. 37 million. The Claimant was responsible for this loss. The Respondent offered him a cheque for terminal dues at Kshs. 186,000. He took 2 weeks to clear. Salome called him to pick his cheque. He declined the cheque. The disciplinary meeting was concluded. The Claimant was availed a copy of the minutes, read and amended certain sections as shown at Respondent's Bundle of Documents page 88.

28. Salome confirmed on cross-examination that the disciplinary hearing was concluded, although the minutes indicated the meeting was 'adjourned.' There was a subsequent meeting of the Panel. Salome did not have minutes of this meeting. Gitau stated he was advised by the Claimant to shut the feed water pump. Gitau is not a Witness in the proceedings before the Court. The Claimant was to disperse information received from Technicians. Emmanuel Juma accompanied the Claimant to the hearing. Other Employees were warned or suspended. The Claimant's contract was terminated because he was negligent. Salome did not know if the Boiler was insured. Lastly, Salome told the Court on redirection that the meeting was adjourned, and recommendation to dismiss the Claimant made.

29. Bautista Carlo restated that all information went through the Control Room. The Claimant was to escalate information to the Shift Supervisor. The Boiler was damaged as a consequence of the Claimant's negligence. Carlo heard through the public address system that there was a fire alarm. He went to the Boiler and found it had already been damaged. The Respondent had to replace the Boiler at a cost of Kshs. 37 million. The damage was ascertained by Manufacturers from South Africa. The Claimant was taken through a disciplinary process as stated in the evidence of the Human Resources Officer. The Respondent resolved to terminate the Claimant's contract, 2 months after the end of the disciplinary hearing. The decision was reduced to regular termination, rather than summary dismissal. The Claimant was offered terminal dues comprising salary for the last month worked annual leave pay, and notice pay of 2 months amounting to Kshs. 186,958. He rejected payment.

30. Cross-examined, Bautista Carlo testified that the Claimant was Control Room Operator, answerable to Shift Supervisor Mokuwa. There was an Auxiliary Operator Joseph Gitau, who was always assisted by another Officer. There was evidence Gitau was instructed by the Claimant to stop the feed water pump. The Claimant was invited to the disciplinary hearing by word of mouth. Damage cost the Respondent Kshs. 37 million. Carlo testified this was ascertained by the Service Engineer. The disciplinary meeting was indicated as adjourned at the end. There was no further meeting. Daniel Nyambu was shown to have been the Acting Supervisor. He would have been aware of any problem if communicated to him. Communication was via radio. All Employees had radios. It was only the Claimant's contract which was terminated.

31. Carlo testified on redirection that he issued letters to show cause to all Employees, except Gitau. All were heard, including Gitau. It was necessary to hear him, because he was part of the shift. Actions against Employees were dictated to by weighing individual contribution. Disciplinary hearing was conclusive.

32. Operations Manager Muriithi Humphrey Reche underlined the role of Control Room Operator as the heart of operations. The Control Room Operator cascaded all information.

33. Reche was with Shift Supervisor Mokuwa, in the former's Office when the incident occurred. Other Employees were informed by Mokuwa

he was in Reche's Office. The Claimant could reach the 2 seniors through radio, telephone or dash to Reche's Office which was adjacent to the Control Room. He did not make the Supervisor aware about the turning off of the feed water pump. Fire alarms went on in quick succession. Source was ascertained to be the Auxiliary Boiler. The Claimant was heard in accordance with the Respondent's Human Resources Handbook. Termination was fair.

34. No other person carried supervisory responsibilities during the fateful shift, Muriithi told the Court on cross-examination. The Supervisor did not have his radio at Reche's Office. The Claimant was called on his phone and advised on his procedural guarantees before the disciplinary hearing. Daniel Nyambu was the Acting Supervisor. He heard all that was taking place. He was not supposed to take any action.

35. At page 97 of the Respondent's Bundle of Documents, Mokuia states he gave instructions to Acting Shift Supervisor to assume responsibilities. At page 115, it is indicated the Acting Shift Supervisor failed to involve himself. At page 112, Amos indicated he left Gitau while knowing there was a problem. Page 113 states the incident could have been avoided, had Amos alerted the Shift Supervisor. In concluding his evidence, Muriithi told the Court on redirection that adjournment of the disciplinary hearing did not mean it was inconclusive. Daniel Nyambu was assigned to other equipment in the Engine Room. He could not double up in other roles. The Human Resources Handbook did not specify how notice of the disciplinary hearing would be communicated. The Respondent prays for dismissal of the Claim with costs to the Respondent.

#### **The Court Finds:-**

36. The Claimant was employed by the Respondent Energy Company, on 8<sup>th</sup> April 2013. His probationary contract bears the same date. He was required to serve on probation for 6 months. He was employed in the position of Electrical Technician, reporting directly to Electrical Supervisor.

37. There was a performance review at the end of probation, where the Claimant was assessed as 'more than adequate.' He was therefore given a contract dated 15<sup>th</sup> October 2013. Employment commenced on 8<sup>th</sup> October 2013. The contract states it was co-terminus with a commercial contract between the Respondent and State Energy Corporation, Kengen. The commercial contract was to expire sometime in the year 2021, meaning the Claimant's employment contract, would, barring the occurrence of other events contained in the employment contract, expire in 2021.

38. The new contract retained Claimant's designation as Electrical Technician, answerable directly to the Electrical Supervisor. His starting gross monthly salary was Kshs. 60,000.

39. In a letter dated 6<sup>th</sup> August 2015, the Respondent appointed the Claimant to the position of Operator 1, answerable directly to the Shift Supervisor. His monthly salary, described as basic in his pay slip, was adjusted to Kshs. 73,797.

40. The contract under clause 19, stipulated the Claimant would uphold Respondent's Charter and Core Values, which were detailed in the Employee Handbook.

41. He did not serve up to the year 2021. On 26<sup>th</sup> January 2016, Respondent's Auxiliary Oil Fired Boiler, was damaged. On 1<sup>st</sup> February 2016, the Respondent wrote to the Claimant a letter to show cause, why disciplinary action should not be initiated against the Claimant. He was to respond within 24 hours.

42. The Respondent attributed damage of its Boiler to the actions and omissions of the Claimant as the Control Room Operator. It was alleged the Claimant was to monitor the equipment and initiate all communication to the concerned Operators.

43. The Respondent noted that the Claimant communicated to the Auxiliary Operator when the Boiler could not build enough pressure and notified the Auxiliary Operator of alarms coming from the common panel. The Claimant ceased communication thereafter. The feed water pump was stopped while the Boiler was running. The Claimant did not make follow-up communication with the Auxiliary Operator and Shift Operator. Lack of communication led to damage of the Boiler.

44. The Claimant replied to the letter to show cause, basically saying that he made the necessary communication to concerned Operators and was not therefore to blame for the damage.

45. He acknowledged he was on duty and assigned the role of dispersal of information from the Control Room. He was expected to monitor all systems as displayed in Warstila Operators' Interface System [WOIS]. He monitored all systems and broadcast information to all Operators. He gave a chronology of communication passing between him and other Operators, Daniel Nyambu, Amos Mafundo, Trainee Gitau, and Shift Supervisor Anthony Mokuia.

46. The Respondent was not satisfied with this explanation. The Claimant was taken through a disciplinary hearing on 4<sup>th</sup> March 2016. On 13<sup>th</sup> April 2016 he was issued letter of termination. The last date at work was indicated as 15<sup>th</sup> April 2016. The reasons for termination were the same accusations outlined in the letter to show cause.

47. The Employment Act 2007, under Section 43 and 45 requires the Respondent to satisfy the test of substantive justification, in its decision to terminate Claimant's contract. Sections 41 and 45 demand the Respondent to show its decision was carried out fairly. Section 47 requires the Claimant to show unfair termination has occurred, while the Respondent must justify the grounds for termination. Essentially the Court must examine and make a determination on the substance and procedure of termination. In the end the Court must consider if the remedies sought have merit. These are the issues in dispute, as understood by the Court.

48. The first accusation against the Claimant related to lack of communication. There was a chronology of communication made, complete

with the hours and names of Officers communicated to, in Claimant's response to the letter to show cause. The Officers receiving information included Shift Supervisor Anthony Mokuu. There was communication from the Trainee Gitau that he decided to switch off the feed water pump on his own. All Officers were on radio. They received all communication from and passing through the Control Room. The letter to show cause, dated 1<sup>st</sup> February 2016, acknowledges that the Claimant communicated to the Auxiliary Operator when the Boiler could not build enough pressure. He also communicated that there were alarms coming from the common panel. The Respondent alleged the Claimant ceased communication after this. However, the schedule of communication contained in the Claimant's answer to the letter to show cause, shows there was communication up to 15.06 hours when the fire alarm was triggered.

49. Significantly, the person assigned the role of starting up the Boiler was Amos Mafundo. He was to accompany Joseph Gitau who was a Trainee from Kengen, and inexperienced in operating the Boiler. The letter to show cause, addressed to Amos, indicates he was contacted by the Claimant from the Control Room. This corroborates the chronology of communication given by the Claimant. Amos, the letter states, failed to communicate his activities to the Claimant and the Shift Supervisor. The minutes of the meeting relating to Mafundo confirms he failed to trouble shoot and left the Trainee Gitau, without asking for assistance from the Control Room and the Shift Supervisor. He had specifically been instructed to assist Gitau. Bautista Carlo confirmed in his evidence that Gitau always needed the assistance of another Officer. Gitau states at page 118 of the Respondent's Documents that he had never operated the Auxiliary Boiler. In this case it was the long-experienced and knowledgeable Amos who was to take Gitau through the operational motions. He did not do so, but left Gitau unaided. This was in the view of the Court the real source of the problem over which the Claimant's contract was terminated. The Respondent need not have looked for other sources of the problem. Failure by Amos to involve the Shift Supervisor appears to this Court to have had nothing to do with lack of information. Bautista Carlo confirmed also that every Employee had a radio. Why would the Claimant be blamed for lack of dissemination of information, while what he communicated with Trainee Gitau, could be heard globally over the radio? The Claimant cannot be blamed for not having communicated to his Colleagues. Why was Gitau left alone by Amos? That is the question the Respondent should have singularly pursued. Other questions were peripheral to this.

50. Operations Manager Muriithi also confirmed, on cross-examination, that there was communication from the Control Room to other Employees. He further testified that Daniel Nyambu was Acting Supervisor. This evidence was not clear because there was a substantive Supervisor at the scene, Anthony Mokuu. The assumption would be that ordinarily there was more than one Supervisor, and Nyambu was acting in place of one such Supervisor. Whatever the case, Muriithi confirmed that Daniel Nyambu was an Acting Supervisor, and heard all that was taking place with regard to the Boiler. At page 97 of Respondent's Documents, Muriithi conceded that Anthony Mokuu, the substantive Shift Supervisor, instructed Daniel Nyambu to assume Mokuu's responsibilities. The minutes at page 115 of Respondent's Documents indicate Daniel Nyambu failed to involve himself. Muriithi unequivocally agreed that Amos Mafundo left Trainee Gitau at the Boiler, while knowing there was a problem with the Boiler. At page 112, bullet 4.2, Amos Mafundo is blamed for failing to communicate with the Shift Supervisor directly. Assuming the Claimant's communication did not reach Shift Supervisor Anthony Mokuu, there is evidence from Operations Manager Muriithi that information reached Acting Supervisor Daniel Nyambu, who did not get involved.

51. From the Claimant's evidence, and that of the Respondent's key Witnesses above, the Court finds the Claimant did not fail to communicate as alleged in the letter of termination. The rest of the Shift Operators were informed. They also had radio. The Shift Supervisors were informed. Daniel Nyambu, who was supposed to take an active role, in the unexplained absence of Anthony Mokuu, gave supervisory duty a wide berth. The first ground in justifying termination was therefore not a valid ground.

52. The second ground was that the Claimant instructed Trainee Operator Joseph Gitau to shut down the feed water pump, while the Boiler was still running. The Claimant in his answer to the letter to show cause denied giving such instructions, stating Gitau made the decision unilaterally.

53. Evidence that Gitau was instructed by the Claimant to turn off the feed water pump was inconsistent. In the Internal Investigation Report generated by the Respondent, dated 26<sup>th</sup> January 2016, the date of the incident, when all Employees' recollection would be expected to be fresh, Gitau did not say he was instructed by the Claimant to switch off the feed water pump.

54. In the minutes of the meeting where Gitau gave an account of the events, contained at page 120 of Respondent's Documents, Gitau is quoted to say he was instructed by the Claimant, at 13.27 hours, to turn off the feed water pump.

55. The Claimant confirms in his comprehensive response to the letter to show cause, that the feed water pump was turned off at 13.27 hours. He did not instruct Gitau to do so. He instantly asked Gitau why Gitau turned off the pump. Gitau told him he did so because the water level was shown as high in the control panel. Prior to the decision by Gitau to turn off the pump, he had been instructed by the Claimant at 13.26 hours, to consult Amos Mafundo. Gitau did not and acted unilaterally, according to the evidence of the Claimant.

56. Gitau was not called as a Witness to support his statement made in the course of the series of hearings conducted by the Respondent, that he was instructed by the Claimant to turn off the feed water pump. Cross-examined, the Claimant was consistent that he did not give instructions to Gitau to turn off the feed water pump while the Boiler was running.

57. It is noted Gitau was in any event supposed to have been acting under the guidance of the derelict Amos Mafundo. The Claimant advised Gitau to consult Amos.

58. It is therefore, the finding of the Court that it was not shown by the Respondent that the Claimant instructed the Trainee Joseph Gitau, to turn off the feed water pump, leaving the Boiler running dry, and leading to damage. The second limb, in Respondent's justification of its termination decision, was not valid.

59. On procedure, there is not much the Respondent can be faulted for. There largely was compliance with the Employee Handbook and the Employment Act 2007. Specific charges were placed before the Claimant. Although given 24 hours to respond to the letter to show cause, he did not complain at the time that the time was too short.

60. He was within 24 hours able to give a comprehensive response. He had the facts at his fingertips. The time needed in replying to the letter

to show cause, relative to the subject matter, appears to the Court to have been adequate, and the Claimant was not disadvantaged.

61. The Claimant was subsequently heard. He was accompanied to the hearing by a fellow Operator Emmanuel Juma. There was no prejudice suffered by him in having been notified of the hearing through word of mouth. He acceded to the invitation and did not request for adjournment if he was unprepared, and request declined.

62. The term 'adjournment' used by the Respondent, at the end of the disciplinary hearing, was used rather loosely, but again the Claimant did not show how such loose use prejudiced him. 'Adjournment' in the understanding of the Court refers to break off, of a meeting or proceedings, with the intention of resuming later. No disciplinary hearing was intended to resume later. Respondent's Witnesses were hard put in explaining the use of the term, some going as far as suggesting there was further proceedings, while it should have been clear there was none. The Claimant was nonetheless not prejudiced by Respondent's misapprehension of the term.

63. The Respondent investigated the matter before taking disciplinary action.

64. The only procedural defect in the view of the Court was in the sentencing. At the end of the investigation and disciplinary hearings, other Operators, who in the view of the Court were in the thick and thin of the events leading to the damage of the Boiler, were suspended or warned. The role and culpability of key players has been discussed above.

65. It was not demonstrated in what way the Claimant's alleged actions or omissions attracted the draconian sanction of termination. Fair procedure required the standards of sentencing, are clearly shown, and applied evenly. There were systemic failures, collective failures, involving the Respondent as much as its Operators. Why would the Respondent entrust operation of its Boiler to an Apprentice? The Claimant was sanctioned unfairly, and all blame heaped on his shoulders. The sanction he received, even had the allegations against him been established, was disproportionate to the sanctions meted out on other Operators who were similarly placed as the Claimant.

66. While other procedural steps largely complied to the standards of fairness, there was defect in the sanctioning of the Claimant.

67. ***Termination was unfair.***

68. ***The Claimant is granted the equivalent of 12 months' salary at the rate of Kshs. 73,797 per month, totaling Kshs. 885,564, in compensation for unfair termination.***

69. There was an offer made by the Respondent to the Claimant for notice pay, days worked but not paid, overtime, outstanding annual leave pay and leave traveling allowance, and shift allowance, all amounting to Kshs. 186,958. The Claimant for unknown reason declined the offer, but replicates same or similar prayers in his Statement of Claim. He should have accepted the offer and consent recorded on partial settlement, if only to assist the Court in focusing on contested issues. ***He is granted the sum of Kshs. 186,958 comprising the items mentioned hereinabove.***

70. The prayer for anticipated salaries is rejected. The Court has taken into account the length of the period the Claimant expected he would have gone on working, had his contract not been terminated. He has been granted the maximum compensation under Section 49 of the Employment Act. The Court has also taken into account that it is Claimant's legal obligation to take active steps, by pursuing alternative employment to mitigate loss of employment. He cannot sit back and expect to continue earning 4.3 million shillings, covering the period ending March 2021, without rendering any work to the Respondent. That would not amount to fair remuneration. The Court has also placed in the hands of the Claimant terminal benefits which the Respondent had earlier offered, and which the Claimant has sought. Lastly, the 2021 expiry date was not cast in bronze. The contract provided Parties could terminate the contract by written notice of 2 months, or payment in lieu thereof. Breach of material obligation, involvement in acts of gross misconduct by the Employee, closure of the Kenyan Office, or staff restructuring could lead to termination before 2021. The Respondent did at the very least offer notice pay of 2 months' salary which would render the prayer for anticipated salary weak and unsustainable.

71. ***The Respondent shall release to the Claimant his Certificate of Service under Section 51 of the Employment Act.***

72. ***Costs to the Claimant.***

73. ***Interest granted at 14% per annum from the date of Judgment till payment is received in full.***

IN SUM, IT IS ORDERED:-

a) ***Termination was unfair.***

b) ***The Respondent shall pay to the Claimant the equivalent of 12 months' salary in compensation for unfair termination at Kshs. 885,564 and terminal dues as pleaded and offered at Kshs. 186,958- total Kshs. 1,072,522.***

c) ***Certificate of Service to issue.***

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

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

**Dated and delivered at Mombasa this 29<sup>th</sup> day of September 2017.**

**JAMES RIKA**

**JUDGE**