



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 612 OF 2015

JANINE BUSSCLAIMANT

VERSUS

GEMS CAMBRIDGE INTERNATIONAL SCHOOL LIMITEDRESPONDENT

JUDGEMENT

The issues in dispute;

- a. Unfair termination of the claimant;
- b. Infringement of the claimant's right to fair labour practices enshrined under article 41(1) of the constitution; and
- c. Breach of employment contract dated 13th March 2012.

1. On 10th April 2015 the Claimant filed the memorandum of claim. On 7th July 2015 the Respondent filed the defence. On 15th July 2015 the Claimant replied to the defence. The Claimant was heard in her evidence on 21st September 2015 and defence hearing reserved for the 28th of September 2015 but the Respondent opted not to call any witness. Parties agreed to file their written submissions, the matter was mentioned on 22nd October 2015 but the Respondent had not filed any written submissions as the Claimant served them late after filing their submissions on 13th October 2015. The Respondent was granted 7 days to file their written submissions and mention for date taken for the 8th February 2016 to confirm but there was nothing filed. The Respondent was represented in Court and made no request to file any written submissions. I take it then the Respondent is not keen to offer any witness or written submissions.

Claim

3. The Claimant was employed by the Respondent, a limited liability company and trading as a school. By a contract of employment dated 13th March 2012, the Respondent engaged the Claimant as the school Registrar and added the roles of Parent Relations Executive and Marketing Officer Manager. The remuneration was for;

- a. Basic salary at \$1360.32 per month;
- b. \$1526.11 for the additional role of Parents relations;
- c. \$862.64 for the additional role of Marketing assistant;
- d. \$265.43 house allowance; and

e. \$185.00 car allowance.

4. The Claimant diligently served in her duties and earned respect from parents, her team, parents and student communities which reflected in her good work performance. Despite the good work performance, the claimant's salary was never reviewed to factor inflation and the Respondent country director informed her that her performance had reduced during the first half of 2014. That during the alleged period of poor performance the Claimant was on her maternity leave from February to June 2014. Upon return to work after completing maternity leave, the Respondent altered and changed the roles of the Claimant without notice or consent. The changes were not formally communicated to the Claimant and was then required to report to a chain of 6 people making her working conditions unpalatable.

5. On 13th February 2015 at 5pm a meeting was held, the Respondent regional director Suhayl Esmajjee informed the Claimant that the Respondent organisation had changed and she had to exit. This was said in the presence of the Director of business development and enrolment and the human resource manager, Flavour Magula and Judy Kimani. The Claimant was then issued with a termination letter citing clause 11.1 of her employment contract but the reasons for the same were not set out.

6. The Claimant being aggrieved by the abrupt and unprocedural termination of employment and the outright discrimination in remuneration and alteration of her contract of employment while on maternity leave filed this claim. That as a result of the manner of termination, the Claimant being an expatriate was not able to get alternative employment which caused her undue distress and suffering. That this was a violation of her constitutional and statutory rights on the grounds that her contract was arbitrarily varied; termination of employment was unfair and unprocedural; there was breach of the employment contract; there were no reasons for the termination of employment; the Claimant was discriminated against in terms of salary increments and or in terms of factoring inflation adjustment of her salary; and the Claimant was subjected to unfair labour practices.

7. The claims are for the payment of salaries and benefits due until retirement; compensation for unfair termination; notice pay; payment for accrued leave; damages for discrimination and unfair labour practices; certificate of service; costs and interest.

8. In evidence, the Claimant testified that she is from South Africa and was employed by the Respondent on 13th march 2012. The Claimant learnt of a vacancy at the Respondent from a friend while in Dubai, She relocated to Kenya with her fiancé and then got employed by the Respondent. She was then contracted to build the school – construction, marketing, and hire of new staff. She started as the Registrar and marketing and was later added more duties. The Claimant was of good performance, built good team work with colleagues and development a good relationship with parents and students.

9. On 13th February 2015, the Claimant was called for a meeting at 5 pm by regional director Suhayl Esmajjee and issued with a letter of termination. This was in the presence of the human resource manager and the director businesses and enrolment. The Claimant testified that she felt her termination was as a result of a personal vendetta against her by Mr Vicheti after she resumed from maternity leave. She was informed that her performance was poor since her maternity leave in February to June 2014 and since then she was treated with hostility and animosity. He refused to greet the Claimant and kept questioning her work stating that it was poor. All the other staff had a salary review and the Claimant was left out. When the Claimant asked for the reasons for separate treatment, she was told that her employment contract was open-ended.

10. The Claimant also testified that, the period when she was alleged to be of poor performance she was lawfully away on maternity leave and to use this to assess her performance was malicious. When the Claimant resumed work from her maternity leave, her supervisor was changed and without any consultations, her work was also changed. Her assistant was promoted to the position of Registrar but her job title remained the same. In 2014 the claimant's work performance had been reviewed and she was found to be of exemplary performance. When the Claimant resumed work after her maternity leave she was not evaluated and the changes to her job position was meant to frustrate her into leaving her employment.

11. The Claimant also testified that she was primarily reporting to the principal, Anthony Millward but her reporting lines were arbitrarily changed. On 26th June 2014 upon return from maternity leave, the Claimant reported to regional director Suhayl Esmajee for all marketing and enrolment matters. In September 2014 the Claimant was directed to report to Rita Amaya the regional marketing manager who was under regional director Suhayl Esmajee. In December 2014 the Claimant was directed to report of Mangula the director business development for all parents and marketing matters. By this time the Claimant position had drastically changed and the reporting lines changed without any formal communication or her consent - by January 2015 the Claimant was reporting all parents' matters to the analyst officer and Mangula and was directed to file weekly reports to the group director in Dubai. This had effectively changed the contract of employment in its substance and work duties.

12. The Claimant also testified that as the parent relations executive she was the point of contact with parent and the students who knew her as the first person of contact when they enrolled at the school. She related very well with students and knew each by name and upon her termination the parents came to the Respondent seeking an explanation as they had no prior notice or chance to say goodbye. Some parents withdrew their children from the school due to the unethical practices.

13. The Claimant testified that she does not seek reinstatement due to the time lapse, the broken trust and due to the severe damage to her career and reputation arising from her unprocedural termination of employment. Since the termination the Claimant has not been able to get a new job, she did an interview at Banda School and despite her good credentials they insisted that there must have been a good reason as to why the Respondent terminated her services and since no reason was given in the letter of termination, she was not hired. The Claimant being an expatriate cannot work in Kenya as her line of work is in the limited field of teaching and very hard to get a new employer in a sector that is controlled and information travels very fast within the expatriate community. It has been 3 years and has not been able to secure any employment. This has emotionally affected her, it has been distressful to be in a foreign country and without a job and having a young family it has been hard to cope.

14. The Claimant is seeking compensation and damages for unfair termination and the discriminatory practices against her and for the reputational damage to her career. Her termination spread quickly in the small expatriate community in Kenya. She is not able to recover and need to be cleared that she had not done anything wrong to warrant the unlawful termination by the Respondent.

15. In cross-examination the Claimant testified that she was directly and indirectly discriminated against, the changes to her position were effected after her maternity leave. There was a personal vendetta against her and her salary was never reviewed. She had a good relationship with parents and student save for lack of support from regional director Suhayl Esmajee. Upon termination nothing was paid in terminal dues which confirms that there was a personal vendetta against the Claimant and there was unfair labour practice. She was the only one whose salary was not upgraded while all the other staff got an increment. That the Claimant has been looking for a new job since leaving the Respondent and had the Respondent given a certificate of service, Banda School would have hired her services. There were doubts created by the termination letter as the reasons were not given.

Defence

16. In defence, the Respondent admitted that they had employed the Claimant as set out in the claim save that her salary was that the sum of \$1526.11 per month was only payable for the duration she remained the parent relations executive and \$862 was only payable during the time the Claimant was the marketing assistant. The Claimant was not entitled to inflationary adjustments to her salary and she had a contact with her terms and conditions. There was no hostility against the Claimant and where such existed, there is no record of the same.

17. The defence is also that there was no discrimination against the Claimant in any manner. The Respondent director did not give any information on the Claimant work performance and there was no change in her roles and terms of employment. When the Claimant was absent for over 4 months, it became necessary for the Respondent to have other employees engaged in assisting with the conduct of

her duties and when the Claimant resumed, the Respondent carried on the business practice to avoid future performance gaps. That this was in line with the express provision of the contract of employment that the Respondent was entitled from time to time to vary the Claimant responsibilities. The termination was lawful pursuant to the employment contract at clause 11 and there was no discrimination against the Claimant. The Claimant cleared with the Respondent and all her dues were paid. That the claim should be dismissed with costs.

18. The Respondent called no witness. The Respondent did not file any written submissions.

19. The Claimant submitted that the letter of termination referred to clause 11 of the employment contract as the basis for the termination which clause made provision for termination upon notice or payment in lieu of such notice. that section 36 of the Employment Act provide for notice before termination of employment or payment in lieu of such notice and section 35(4) of the Act give an employee a right to dispute any termination that is no lawful or fair. That termination of employment must be based on valid reasons that can be justified and the burden for such justification is on the employer. In this case the Respondent does not give any reasons for the termination of the claimant's employment and no effort was made to justify the same and thus this amounted to unfair termination under section 45 of the Employment Act. The Claimant has not been able to obtain new employment thus diminishing her career growth or prospects of new employment in the international school business as an expatriate. The Claimant is seeking for maximum compensation.

Determination

Whether there was unfair termination of employment;

Whether there is an infringement to the constitutional right to fair labour practice

Whether there is breach of contract

Whether there are any remedies.

20. Parties to an employment relationship have the liberty to set the terms and conditions governing the same. Such terms and condition must however take into account the prevailing legal and constitutional safeguards particularly protecting the employee to avoid exploitation and discrimination against any employee. In this case, the Claimant and the Respondent had an employment contract vide letter of appointment issued to the Claimant and dated 13th March 2012. The Claimant was appointed the School Registrar with additional responsibility for the role of parent Relations Executive and Marketing Officer. The duties for the appointment were also set out in the letter of appointment. At clause 4, the remuneration payable was also agreed upon. Clause 8 made provisions for policies, practices, rules, regulations and instructions of the Respondent applicable to the Claimant and overall, the Employment Act was to apply.

21. Therefore, the employment of the Claimant was to be governed by the employment contract, the Respondent policies and the Employment Act. Clause 11 of the contract of employment set out the termination provisions where either party would give notice or payment in lieu of notice or the Claimant would be terminated without notice upon committing a serious breach of the contract; is of gross misconduct; or has been involved in fraud, dishonesty or conduct unbecoming.

22. The applicable law governing the parties is the law on employment and labour relations in Kenya. Therefore even where the parties had an employment contract, the terms and conditions must be interpreted in accordance with the applicable law.

23. On 13th February 2015, the Claimant was issued with a letter of termination on the reasons that;

... We regret to inform you that we are terminating your employment as per Clause 11.1, Termination, and Indefinite Term of your employment contract effective immediately.

Accordingly, your last date of employment with the company will be 13th February 2015 and the company will provide you with one (1) months' salary in lieu of notice.

24. In this regard therefore, clause 11.1 of the employment contract made provision for;

Indefinite term

Except as provided in clause 5, your employment may be terminated by the company giving you not less than one months' notice in writing or one months' salary in lieu thereof. If you wish to terminate this agreement you may do so by giving notice to the company of not less than one month in writing or by forgoing one month salary in lieu of notice.

25. These terms and conditions must be read together with the applicable law as the claim is that the Claimant was wrongfully and unfairly terminated. The starting point that give resounding pronouncement in protection of the Claimant is section 3 of the Employment Act;

3. (1) This Act shall apply to all employees employed by any employer under a contract of service.

26. These provisions must also be read together with subsection 3(6) that prohibit the varying and amendment of employment terms to the disadvantage of an employee.

(6) Subject to the provisions of this Act, the terms and conditions of employment set out in this Act shall constitute minimum terms and conditions of employment of an employee and any agreement to relinquish vary or amend the terms herein set shall be null and void.

27. Section 35 of the Employment Act allow a party to an employment contract to issue notice to terminate the same or pay in lieu of such notice, however under section 35(4) create rights due to each of the party thus;

(4) Nothing in this section affects the right—

(a) Of an employee whose services have been terminated to dispute the lawfulness or fairness of the termination in accordance with the provisions of section 46; or

(b) Of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

28. The employee has the right to dispute the lawfulness or fairness of the termination of the employment contract and the employer has the right to terminate the same where there exists a lawful cause. It is therefore not just sufficient under the current legal regime for an employer to simply issue a letter of termination on the grounds that the employment contract make provision for it, there must exist a lawful and or fair reason so as to terminate an employee. On the same hand, an employee who misconducts herself and engages in acts that amount to gross misconduct, can be terminated.

29. In this case, the Claimant testified that on 13th February 2015 she was called for a meeting at 5pm and told that she was of poor performance and then issued with a letter of termination. That present at the meeting were her colleagues the Suhayl Esmajjee the Regional Director, Flavour Magula the Director business Development and Judy kimani the Human Resource manager. That there was no prior notice, appraisal or reasons given for the Claimant to be able to defend herself. The Claimant also testified that at this time she had resumed from her maternity leave and was accused on being of poor performance and her duties reallocated to other employees, her reporting lines changed and her contracts effectively reviewed without her consent or prior information. That she felt the Respondent officers had a personal vendetta against her since the time she took her maternity leave and hence the unprocedural termination.

30. It is apparent that the Claimant was issued with the letter of termination on 13th February 2015 and made to exit her employment immediately. Such summary action is not supported by any evidence as to

the nature of cause that existed at the time for the Respondent as the employer to act as such. save for citing clause 11.1 of the employment contract, no reasons are given for the termination of the Claimant's employment. Without any call of evidence, the Respondent denied the Court any explanation as to why the legal procedures set out under section 35(4) were not adhered to. The right to terminate the contract of employment went with the legal duty and responsibility to give lawful and fair reasons for the same.

31. I therefore find no lawful or fair reason pursuant to the provisions of section 35(4) of the Employment Act read together with section 47 of the Act which require an employer to set out the substantive reasons for the summary action. Without such reasons the resulting termination was unfair and contrary to section 45 of the Employment Act. There lacked a substantive reason upon which the Claimant was terminated.

32. Save for the above, the summary action by the Respondent in terminating the Claimant on 13th February 2015 lacks the required procedural fairness in that there was no prior notice or hearing for the Claimant to know the reasons for her termination so as to defend herself and keep her employment. Section 41 of the Employment Act sets the mandatory procedures that every employee should be taken through before any termination. This procedures are not at the whims of an employer. Where not adhered to, by giving the employee a hearing in the presence of an employee of their choice, the resultant termination is procedurally unfair.

33. In this case, the termination of the Claimant was both substantively and procedurally unfair. She is entitled to compensation.

34. The Claimant is seeking damages for discrimination against her and for unfair labour practices. These claims are based under the provisions of article 41 of the constitution. The Claimant testified that she was unfairly treated and discriminated against on the basis that from February to June 2014 she took her maternity leave and upon resuming duty, her duties had been reallocated to other employees without her being informed. In defence to these claims the Respondent at paragraph 9 of the Statement of Defence avers that;

... during the claimant's absence of more than four months, it became necessary to have other employees engaged in assisting with the conduct of her duties/roles and when the Claimant resumed her duties, the Respondent carried on the business practice to avoid future performance gaps. This was in line with express provision of the contract of Employment that the Respondent was entitled from time to time to second the Claimant to perform work of a Parent Relations Executive and marketing Officer or make reasonable variations to her job title, job duties and/or responsibilities.

35. Such defence, fails to recognise that there are now legal and constitutional safeguards that employees enjoy. One such legal protection is with regard to non-discrimination of any kind. An employee cannot be discriminated against on prohibited grounds set out under article 27 of the constitution read together with article 41 that prohibit unfair labour practices and section 5 of the Employment Act that specifically outlaw discrimination against employee. Article 27 of the constitution outlaws discrimination against any person on the following grounds;

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, Health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

36. Therefore, any form of discrimination, directly or indirectly against any employee on the above outlawed grounds once cited must be looked at keenly and addressed by this court. The Claimant gave emphasis to the nature of her duties allocated upon employment that were effectively changed upon her resumption of duty after her maternity leave. For her employment terms to therefore be changed simply because the Claimant had taken such maternity leave, a matter protected under the constitution, and the effort by the Respondent to justify the same in defence on the basis that the contract of employment allowed for such changes must be abhorred in the strongest terms. The contract of employment aside, the Claimant as an employee who became pregnant and had to take maternity leave, is protected. To therefore

review and change the employment of the Claimant and reduce her duties without prior information and consent was to effectively reduce her stature and standing without any due cause or justification. Where the Respondent found the need to give the Claimant support due to her changed circumstances and need to cope with work after maternity leave, such should have been done in consultation with the Claimant. It is not sufficient that the Respondent was acting in good faith, but the due dignity and respect of the claimant's employment position and reporting lines should have been put into account before varying her job. Such direct and indirect acts of treating the Claimant differently and separate from her colleagues I find to be discriminatory and without any justification.

37. The claimant testified that her salary was never reviewed. That other employees' salaries were adjusted to factor inflation. The respondent defence is that the claimant had a contract setting out her terms. This in essence was to justify that indeed other employees enjoyed a salary review due to inflation. What is apparent in the employment contract for the claimant is that all the respondent policies, rules and regulations were to apply to the Claimant. her contract of employment was also subject to such rules and regulations. Where the respondent did a salary review for other employees so as to factor inflation, such should have been a benefit to all employees, including the Claimant. The respondent did not offer any evidence to challenge the claim. To set out the Claimant and fail to apply the rules and policy equally to her and fail to review her salary. This i find to be discriminatory.

38. The differential treatment of the Claimant, where the respondent policies were selectively applied to her disadvantage, I find were in outright breach of her contract of employment. such contract set out in the various clauses that all respondent policies were applicable to the claimant. to therefore fail to adjust the Claimant's salary while other employee got such a review is an act in defiance of the agreed contractual terms.

39. Fair labour practices in the work place also demands that, no employer should review employment terms and conditions to the disadvantage of the employee. Such review is not only with regard to remuneration but the job specifications, duties and roles assigned to an employee. It therefore is inhuman and degrading for an employee to wake up one morning and realise that they have to report to a junior officer, report to such junior officer and or her duties are taken away and assigned to an assistant. The right to fair labour practices at the work place is specifically protected thus;

41. (1) every person has the right to fair labour practices.

(2) Every worker has the right—

(a) To fair remuneration;

(b) To reasonable working conditions; [emphasis added].

40. The Claimant testified that she was reporting to the Principal of the school. Upon resumption from her maternity leave, the regional director Esmailjee required that some duties be assigned to other employees. Such changes were without consultation with the Claimant as the subject employee. The employment contract was specific for the position the Claimant was employed for and there is no evidence that she was not able to undertake and perform her duties as required. To therefore make substantive changes to her duties and roles was to act unfairly and contrary to fair labour practices. Such was to frustrate the Claimant out of her position. I therefore take it the resulting summary action of requirement the Claimant to immediately leave her employment was all targeted at frustrating her, putting her in unbearable circumstances so as to perpetuate the unfair labour practices. Such practices are outlawed. Such practices where undertaken by an employer against an employee, such an employee has the remedy of damages.

41. The above constitutional protections on non-discrimination are further given meaning under the Employment Act. In this case and of great relevance and emphasis is section 5(3) of the Employment Act. It gives particular protection for non-discrimination thus;

(3) No employer shall discriminate directly or indirectly, against an employee or prospective

employee or harass an employee or prospective employee—

*(a) on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, **pregnancy**, mental status or HIV status; [emphasis added].*

42. And an employer who contravenes any of the provisions under section 5 of the Employment Act and discriminates against any employee;

(6) An employer who contravenes the provision of the section commits an offence.

43. Taking of maternity leave is a right under the Employment Act. Where an employee is granted such leave, such should not be applied to her disadvantage. Taking such time away from work is a lawful absence. The resumption of duty and the circumstances and performance of an employee, where necessary must take into account such maternity leave. Indeed the Respondent in defence notes that the Claimant was away from work for 4 months but fails to acknowledge that such absence was lawful and for maternity leave. Where there were require support functions to the Claimant roles, upon resumption of duty, consultations should have been held to appraise the Claimant so as to take over her duties and where need arose, such support given upon full disclosure as to the time periods and the rationale.

44. It therefore becomes the duty of the court, where discrimination against any employee is stated, to interrogate the circumstances and evidence in this regard and where there is a finding that indeed an employee was discriminated against on any of the prohibited grounds, the Court must direct as appropriate. Section 46 of the Employment Act makes it unfair for any employee to terminate an employee on the grounds of pregnancy and by extension for taking maternity leave. The protection of an employee against any form of discrimination at the work place is therefore a matter taken very seriously as when alleged, the burden placed upon an employer is enormous. The employer must prove that the discrimination did not take place as alleged and that where there is discrimination, it was not with regard to any of the outlawed grounds thus;

(7) In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act omission is not based on any of the grounds specified in this section.

45. The respondent did not offer any evidence to controvert the claim and the evidence of the claimant. The claimant's evidence stood out as truthful and honest. It was apparent that she was under a lot of trauma and distress. This was closely related to her time and work with the respondent and the circumstances leading to her termination.

46. In this case, when the Claimant resumed her duties after her maternity leave, her duties were varied and the Respondent in defence does admit to making such variations. As noted above, paragraph 9 of the defence makes an effort to justify these roles changes. I find no lawful, reasonable or fair grounds for the changes. Such actions by the Respondent are unfair labour practices prohibited in law and under the constitution.

47. I find that the Claimant was discriminated against at her workplace on the basis of her pregnancy and taking maternity leave, such was an unfair labour practice without any justification. The Claimant is entitled to damages.

Remedies

48. The claim are for salaries due until retirement. The Claimant failed to set out why such is claimed. She does not state her age at the time of termination or at the time of giving evidence. The contract of employment gave the retirement age at 60 years and to therefore claim for salaries due until retirement, the claimant's current age was a crucial factor in considering the same.

49. It is however apparent and based on the claimant's evidence that she has been unable to secure new employment in the sector she was specialised for, she has missed key opportunity with Banda School on the grounds that her termination had no basis, no reasons were given and any potential employer would be concerned as to why a highly performing employee with high accolades would suddenly lose such employment and fail to employ her. As such, these circumstances will only be put into account in the Court assessment of the compensation due for unfair termination. The Claimant for salaries due until retirement is declined.

50. On the finding that the Claimant was unfairly terminated, such termination was substantively and procedural unfair, compensation is awarded under section 49 of the Employment Act at the maximum allowed 12 months. Such will be based on the position held by the Claimant at the time of her employment comprising the due benefits and allowances in accordance with section 49(1) (c) based on the gross monthly wage or salary of the employee at the time of dismissal. The basic pay; the pay for the position of parent relations executive; the payment for the position of marketing assistant; the house allowance; and car allowance all amount to \$4,199.50 per month. This is awarded herein at the date of this judgement and based on the current Central Bank of Kenya going foreign exchange, the award amounts to \$4,915.00 x 101.8 all at Kshs.500, 347.00 x 12 all at **Kshs.6, 004,164.00**.

51. The Claimant specifically set out a claim for damages for discrimination and unfair labour practices. Such is based on the violation of article 41 and 27 of the constitution. Upon the Court making a finding that there was discrimination against the claimant, there were unfair labour practices against the claimant, damages are due. The should have essentially been reinstated back to her position with back wages on the premise that she was discriminated against but her evidence was that there is no longer trust between the parties and would not seek a reinstatement. She has been unable to secure new employment due to the nature of her termination without any reasons. No certificate of service was issued, a document crucial to confirm that the Claimant was indeed an employee of the Respondent. It has been a year now since the Claimant was terminated from her employment, she is a skilled person with high chances of getting new employment in her home country South Africa or any other employer worldwide. Putting the above into account, the claimant has been out of work for the last one (1) year, damages are hereby awarded at Kshs.6, 000.000.00.

52. The Claimant is seeking notice pay on the basis that such was not paid and is due. The letter of termination was on the premise that notice was not issued and payment would be made in lieu. In the computation of final dues, such is paid under item 11(E). The Claimant is declined.

53. A certificate of service is a right under section 51 of the Employment Act. Such a certificate should be issued to an employee together with the letter of termination. To fail to issue the certificate and where there is proof that the employee is unable to secure new employment, the compensation due must factor such evidence. In this regard, the Claimant shall be issued a certificate of service unconditionally and immediately.

54. . Costs are claimed. Despite the Claimant sending a demand letter to the respondent, the claims remained unsettled. The Respondent offered no evidence. Costs are due herein.

Judgement is entered for the Claimant against the Respondent in the following terms;

- a. **A declaration that the Claimant was unfairly terminated;**
- b. **A declaration that the Claimant was discriminated against and the Respondent engaged in unfair labour practices against the claimant;**
- c. **Compensation is awarded at kshs.6, 004,164.00;**
- d. **Damages awarded at Kshs.6, 000,000.00;**
- e. **Costs of the suit; and**
- f. **The Claimant shall be issued with a certificate of service forthwith.**

Delivered in open court at Nairobi and signed this day of 11th February 2016.

M. Mbaru

JUDGE

In the presence of:

Court Assistant: Lilian Njenga

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