



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 520 OF 2011

PETER WANJOHI MUTHEE.....CLAIMANT

VERSUS

BAYER EAST AFRICA LIMITED.....1ST RESPONDENT

BAYER ENVIRONMENTAL SCIENCE SA.....2ND RESPONDENT

JUDGMENT

1. The claim was filed on 7th April 2011 and the Claimant averred that he was unlawfully terminated by the Respondent. He averred that between 30th March 2009 and 13th January 2011, he was a business area manager East and West Africa. He stated that on 13th January 2011, his services were unfairly terminated through an unprocedural declaration of redundancy. He averred that the declaration of redundancy was preceded by the recruitment of Mr. Nadim Mohr some 5 months earlier. It was averred that the performance appraisal of the Claimant showed that he was a high performing employee who was regularly commended and appropriately rewarded. The Claimant thus sought

- i. a declaration that the termination of his employment was unlawful
- ii. the outstanding terminal dues of Kshs. 772,385/-
- iii. compensation for loss of earnings for 14 years Kshs. 129,760,680/-
- iv. bonus declared for the year 2010
- v. costs of the suit
- vi. interest on ii) and iv) above at court rates
- vii. any other or further relief as the honourable court may deem just and fit to award

2. The 1st Respondent filed a defence on 27th April 2011 and averred that the Claimant was employed as the business area manager East and West Africa pursuant to a contract of employment dated 30th March 2009 and that the Claimant was employed for a period of one year before being declared redundant. The 1st Respondent averred that since early 2010, it was restructuring and reorganizing its business operating units and in order to strengthen its business and presence in West African region created an independent department to manage West Africa, a manager in charge of West Africa was appointed and as a result the position the Claimant held was abolished. The 1st Respondent averred that it complied with all the provisions of the Employment Act relating to redundancies and that it notified and consulted with the Claimant and also notified the district labour office of the intended redundancy. It was averred that the Claimant's redundancy was lawful and in conformity with the requirements of the law. The Respondent submitted that the final dues had been prepared but the Claimant had refused to collect the said cheque. The Respondent denied being discriminative to the Claimant or that his reputation and character was injured. The Respondent averred that the Claimant's claim for loss of earnings for 14 years was not provided for under the Employment Act and it would amount to unjust enrichment at the 1st Respondent's expense as the Claimant would not have rendered any services in those years. The Respondent averred that the Claimant's claim for bonus in 2010 was unjustified and that the Claimant was not entitled to bonus for that period.

3. On 13th October 2011, an amended claim was filed and in it, the Claimant averred that on 22nd December 2010, the 1st Respondent closed for Christmas and New Year holidays and work was to resume on 2nd January 2011 and that the Claimant sought and was granted extended

leave up to 12th January 2011. He averred that he resumed on 13th January 2011 and on that day at a meeting convened by Mr. Nadim Mohr and attended by Ms. Damaris Kimosop, the Claimant was informed that his services were being terminated on account of redundancy. He averred that this was the first time he was hearing of that termination and was asked to hand over all company equipment and belongings in his possession and leave immediately. He averred that at the gate he was subjected to a thorough search and on 12th February 2011 he appealed the termination but his appeal was ignored by the 1st Respondent. He averred that he was entitled to terminal dues and that the 1st Respondent had failed or refused to pay the terminal dues but had upon demand offered to pay dues whose computation the Claimant now disputes. The Claimant averred that the decision to declare him redundant were preceded by the arrival of Mr. Nadim Mohr from the Respondent's operations in France 5 months prior. The Claimant averred that sparing an employee who had only served for 5 months and instead declare redundant one who had served successfully within the ranks for 20 years amounted to racial discrimination at the work place which is against the law. The Claimant averred that the action to declare him redundant went against the principle 'last-in-first-out' provided in law for cases of redundancy.

4. The Respondents filed an amended memorandum of defence on 28th October 2011. The Respondents averred that the Claimant was initially employed by the 2nd Respondent until 30th March 2009 when the 2nd Respondent transferred its environmental science operations in East Africa as well as employees to the 1st Respondent and that consequently the 2nd Respondent paid the Claimant all terminal dues owed to him. The 2nd Respondent averred that it was a stranger to the dispute between the Claimant and the 1st Respondent. It was averred that the Respondent created a post of commercial operations manager sub-Saharan Africa in 2010 which position was held by Nadim Mohr and that the position was graded as V.S. 1.3 while the position of business area manager East and West Africa was downgraded to level V.S. 1.2. It was further averred that Nadim Mohr was appointed commercial operations manager and the head of the environmental science department on the basis of his experience, skills, knowledge and educational background. It was averred that the 1st Respondent complied with all provisions of the Employment Act in regard to the redundancy and notified the Claimant, the Labour officer and offered to pay Kshs. 1,449,087.78. The 1st Respondent averred that the Claimant was notified that the cheque and certificate of service. The 1st Respondent averred that after the Claimant was declared redundant a notification was sent out to its distributors stating that the Claimant was no longer its employee and asserted that the communication did not injure the Claimant's character or reputation in any way.

5. The Claimant filed a reply to the amended defence on 3rd January 2012. In the reply, the Claimant stated that the 2nd Respondent was properly enjoined to the suit as the letter of appointment stated that the Claimant would report to the 2nd Respondent for business perspective. The Claimant averred that there was no restructuring of the 1st Respondent and that upon arrival of Nadim Mohr there was a feeble attempt to alter the Claimant's job description and an attempt to tinker with the organizational structure to accommodate Nadim Mohr which structure was subsequently abandoned. He urged the Court to dismiss the defence and enter judgment as prayed.

6. The case was heard on diverse dates to wit, 19th November 2014, 11th February 2015, 26th June 2015 and 22nd July 2016. In his testimony, the Claimant testified that he was the Business Manager for the Respondents for East and West Africa regions and was at grade VS 1.3. He stated that his termination was wrongful, unlawful, inhuman and discriminatory and no proper reason given because he reported to work and was told his position had ceased to exist. He referred to the letter of termination dated 13th January and testified that on that morning he had reported on duty after having closed for Christmas on 22nd December and gone for holiday. He stated that he had extended his holiday by one week. He stated that he was taken to an office and told he was being declared redundant without any prior communication. He testified that he was asked to leave immediately and hand over the personal computer. He stated that he was told the moment he would clear he would get his dues and as a result of the termination was shocked and stressed. He testified that he started going from office to office to clear and that it was embarrassing and that as he was leaving he was searched and a colleague by the name Mora told him *pole sana* during the search. He stated that he was called to the meeting which Nadim said that it had already been decided that he would have to go. He stated that the meeting was not consultative. He testified he expected the head of crop science to be there and only Damaris Kimosop and Nadim Mohr were present. He stated that the clearing form is elaborate and he went to the departments but was not paid his terminal dues. He testified that it was only after his lawyers contacted the company that he was informed that he had refused to collect his terminal dues. He stated that the same day he was informed of the redundancy is the same day he was sacked. He stated that the notice of redundancy was not copied to him and what he had was summary dismissal after having served the company for over 20 years. He was referred to exhibits and stated that there was an email from head of Bayer Environmental Science in France congratulating them for a wonderful performance of 57% above budget. He stated that the company was doing excellently well and his performance over the years was exceptional and he rose through ranks. He testified that his performance was outstanding and very few employees ever rated at that level. He stated that he had achieved 100% as the in-charge of the life net project for mosquito nets and the only thing he achieved 90% was a project handled with colleagues. He stated that he was not blowing his trumpet and that he was an excellent performer and that perhaps his performance was his undoing. He stated that he never got any disciplinary or warning and only got promotions. He stated that there was nothing to suggest he had been downgraded as he did not get a letter. He stated that six months after he had ceased working for the Respondent, it was advertised and he wondered how one can declare a job redundant and in 6 months creates a job for another person. He testified that it was odd and discriminatory as he had been there longer and the principle first in last out was not applied. He stated that in his opinion his salary was causing a stir, he had a Toyota Prado just like the MD in Bayer EA and they parked next to each other. He testified that the worst part about it was that people out there knew of his termination without his knowledge. He stated that he appealed to the company but never got a reply to that letter. He testified that there was an email which injured his character. He stated that after retrenchment he went looking for a job and the chemical industry knew he was no longer working with Bayer and that two industries he went to told him they were apprehensive due to the email they had received. He stated that the email was injurious as it portrayed him as someone who had done something wrong or someone who could not be trusted and therefore it destroyed his career. He stated that the best way to clarify the issue is for the Respondents to avail the email as it was not copied to him. He stated that the industry is small and he ended up starting his own pest company as an exterminator of rats, flies and that is how he earned his keep. He testified that his termination was clothed with malice as he reported to work and was told there was a meeting and told he was redundant. He stated he was told to hand in a computer and he thought this meant they did not trust him as they wanted him to hand it in immediately. He stated that he was frisked and searched as he left and one of the guards was almost in tears as she had known him well all the years. He testified that he returned the clearance form and expected his terminal dues.

7. In cross exam by Mrs. Opiyo, he stated that because he was head of Bayer Environmental Science he was to get someone in charge of Central Africa. He testified that he was head of business of East, Central and West Africa. He was referred to the organizational changes and stated that his roles was 50% for life-net introductions and 50% for Uganda, Somalia, Djibouti, Eritrea, Rwanda, Burundi among others. He stated that the organization structure changes do not refer to West Africa. He testified that in 2007 his employer was Bayer Environmental

Science. He stated that in the proposed structure, he was to report to Nadim who had joined the company in September and all the managers were to report to Nadim. He stated that he did not cover South Africa except when he undertook the Life Net project which covered all of Africa. He stated that Nadim's role was vector control business development and product management. He stated that he received his terminal dues from the 2nd Respondent and that it remained as his employer as the 1st Respondent was their agent. He stated that the letter says the office was abolished and conceded that a company is entitled to reorganize and restructure and that every organization undergoes changes. He testified that both Nadim and Damaris were present at the meeting of January 2011. He testified that he asked if he could be an agent and was pleading as he had just lost a job. He stated that they did not give him an answer. He testified that he did not think there was a completed clearance form. He stated that he was not informed of the breakdown on leave days etc. at the meeting. He testified that the letter indicated that the dues would be paid once he cleared. He stated that it is a blatant lie to suggest he insisted on leaving immediately and serve notice. He testified that Nadim Mohr was not his supervisor according to his job description. He testified that Nadim signed his 2010 objectives a day before he got retrenched and the email was sent on 12th and he did not end up responding. He stated that he gave the clearance form to the Respondent and that is what would be used to calculate his dues. He stated that he was called for his dues and that the Respondent had indicated that once he had cleared, his dues would be calculated. He stated that he had not collected the dues because they were not calculated correctly. He testified that he was in the same grade with Nadim and had seen from the Respondent's documents that he had downgraded. He stated that Nadim came for a short period and it was not clear what Nadim was doing. He testified that he was discriminated against and was the only person in that division who was retrenched. He testified that he had raised the issue of discrimination based on how it was done. He stated that a foreigner came but it would still have been discrimination if an African came. He stated that when he left Nadim was the one who headed his division. He stated that the email was partly correct and that the part on the leaving is factual because it stated that he had left the organization but the email did not say he left due to performance issues.

8. In re exam by Mr. Nduru, the Claimant testified that he returned the Blackberry to Bernard Nganga of ICT who also received the computer. He stated that he returned the clearance form to Josephine Gakonyo his assistant. He stated that he was told he could collect the terminal dues from the Respondents' advocate and was not told of any conditions. He testified that he was in court because no notice was given. He expected at least the MD or HR to talk to him to tell him what he was to face. He stated that Nadim was not his supervisor and that the new job description was given a day before he was retrenched. He stated that he did not think if there was an employee who had done so well would send them away that way. He stated that if his position had changed he should have been issued with a letter for his signature.

9. The defence called Damaris Kimosop, head of human resource of the 1st Respondent. She testified that the Claimant was employed by the 2nd Respondent and the company was closed down and exited the market and the Claimant was paid Kshs. 4,197,460. She stated that the Claimant was tasked with responsibility of closing all the bank accounts of the 2nd Respondent and the rental premises and was given power of attorney to do so. She stated that the 2nd Respondent is a different entity from the 1st Respondent and the 2nd Respondent should not have been included in this suit. She referred to the employment contract issued on 30th March 2009 appointing the Claimant as business area manager for East and West Africa. She testified that the supervisor of the Claimant was Nadim Mohr and the Claimant's major responsibility was profit and loss for East African Region. She stated that the Claimant's position was re-evaluated and it changed because of company changes and the position was only responsible for East Africa Region. She stated that the email sent by Sylvester Jobic siting in South Africa was communicating the changes happening in Sub Saharan Africa. She stated that the email was communicating the changes and that the Claimant was to be responsible for Uganda, Somalia, Djibouti, Eritrea, Rwanda and Burundi and there were no West African countries. She stated that Nadim was the commercial head for environmental science business in Sub-Saharan region and was not performing same duty with Claimant and was the supervisor of the Claimant. She testified that the Claimant and Nadim were not at the same level and that Nadim was VS. 1.3 and the Claimant was VS. 1.2. She stated that this was not formally communicated to Claimant as the outcome was in December 2010 and that was the duration when the Claimant was out of office. She stated that the 1st Respondent has been carrying out restructuring and is still carrying out structuring. She testified that there was an organogram that indicates the structure before structuring and the new structure after restructuring. She stated that the new development was the Claimant was previously reporting to Sylvester Jobic and in the new one, the Claimant was to report to the head of commercial operations Sub Saharan Africa and Ambrose Anguka was one of the business area managers responsible for Ethiopia, Kenya and Tanzania. She testified that she called the Claimant in December as they wanted to communicate the evaluation and also the restructuring and he told her that he had something he was doing at home. He had taken his son for a rite of passage and so he could not be available. She testified that there was intention of abolishing the position of area manager East Africa. She testified that on the morning of January 13th 2011 there was a meeting between the Claimant, Nadim Mohr and herself. She stated that they communicated the evaluation received in December 2010 and they informed him of the restructuring. She stated that a formal decision was made and they told the Claimant that based on this, the position he held would be declared redundant. She stated that the Claimant did not want to serve notice and was paid one month notice. She testified that at that point the Claimant asked if Bayer could engage him as a consultant and Nadim Mohr asked that he presents a proposal that would be considered as consultant as the Claimant has a wealth of knowledge in the management of environment science. She testified that he did not present a proposal and stated that it was not true that he was chased from the office of the Respondent. She stated that it was a decent discussion, a peaceful meeting. She stated that the Claimant was notified that he would receive one month's pay in lieu of notice and severance pay for 15 days for each year worked, leave days for each year worked, leave days earned but not taken and pension contribution per RBA regulations. She stated that the Claimant had not collected the terminal dues and that she did not receive a clearance form from the Claimant. She testified that what is expected of employee exiting is to submit a duly filled form to head of HR. She stated that it was a normal occurrence for staff to be searched and other staff including her are searched. She stated that the Claimant's redundancy was not related to performance at all and that there were no performance issues. She testified that Nadim did not take up the Claimant's job. She stated that there is the corporate compliance policy and they uphold it. She stated that the Claimant did not raise allegations of discrimination after Nadim reported and later Fred Nyabara took over as head of commercial and he is Kenyan. She stated that she was not aware of any claim of discrimination of Claimant. She testified that the procedure is that first an employee needs to formally write of the discrimination to head of HR and there is also a hotline which is a 24 hours toll free line. She testified that employees can call to report. She stated that the Claimant's role is no longer there at 1st Respondent. We are unable to retrieve the email sent to distributors. We changed email. We were using lotus notes then we moved to Ms office. That email was done on lotus notes. None wrote or made a call. None called to seek reference. I've not communicated to any third parties on account of the Claimant.

10. In cross-examination by Mr. Nduru she testified that she had worked with the 1st Respondent for 6 years. She stated that the Claimant's services were terminated on 13th January 2011 and she had been there roughly 5 months at the time of dismissal. She testified that the 2nd Respondent closed offices in Kenya and the Claimant was paid his dues and a certificate of service was issued by Bayer EA. She stated that the 2nd Respondent should not be included in the suit. She stated that it was possible because of restructuring on going the positions had

changed and that the position description was not changed for one person. So many other positions were reviewed. She stated that it is important to notify employee of the impending redundancy. She stated that she did not inform him in writing of the position been declared redundant. She testified that he was VS 1.3 when he was responsible for East and West Africa and when the responsibility for West Africa was removed the position shrunk and the position came lower to VS 1.2. The outcome of the position evaluation came out in December 2010 and the communication was not given at the time. He was not informed in writing that he was downgraded. She stated that the Claimant's grade is given as VS 1.3 and she sought to communicate in December. She indicated that she needed to see him in office and it was really important. She testified that she had meeting in January 2011 and she recorded the minutes of the meeting. Formally this was the first time he heard he was being declared redundant and there had been informal discussions on redundancy. She testified that the job was to be declared vacant with immediate effect. She stated that they informed labour officer of the intention on 21st December and the January 13th meeting was first time the Claimant was informed of the retrenchment. She stated that she did not get the clearance form from the Claimant. She stated that the duties of Nadim Mohr were different from those of the Claimant as Nadim was the boss and would cascade the duties and roles which would be done by Claimant. She testified that they were unable to get the original email that was done by Nadim Mohr.

11. She testified in re-exam and stated that there was a matrix with 2 managers, one sitting abroad and one local. She stated that she was not able to inform the Claimant of the changes because he was away. She stated that his grade is 1.2 and there is only one person per grade and that his salary did not change as the emoluments remained the same. She testified that the Claimant was given the option to serve notice but he declined and did not come to get his dues. That marked the end of testimony by the parties.

12. The Claimant and Respondent filed submissions on 29th July 2016 and 5th August 2016 respectively. In his submissions the Claimant submitted that under Article 47(1) of the Constitution he was entitled to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The Claimant cited Section 4(3)(d) of the Fair Administrative Action Act 2015 and submitted that under Section 40(b) of the Employment Act he was entitled to be notified personally in writing of the intended redundancy. Reliance was placed on the Court of Appeal decision in **Thomas De La Rue (K) Ltd v David Opondo Omutelema** and the case of **Aviation and Allied Workers Union v Kenya Airways Limited & 3 Others [2012] eKLR** on notice period and procedural fairness. He cited the Employment Act on Section 43 on justification for termination and submitted that there was no reason for the termination. The Claimant thus sought the award of the sums claimed.

13. The Respondent submitted that the 2nd Respondent was a stranger to the dispute between the Claimant and the 1st Respondent as the 2nd Respondent was not an employer of the Claimant. Reliance was placed on the case of **Nick Githinji Ndichu v Clerk Kiambu County Assembly & Another [2014] eKLR** where the court dealt with the meaning of employment relationship. The Respondent submitted that redundancy is a legitimate ground for terminating a contract of employment. The 1st Respondent cited the Court of Appeal case of **Kenya Airways Limited v Aviation & Allied Workers Union & 3 Others [2014] eKLR** and the case of **Feisal Ahmed v Nokia International [2014] eKLR**. It was submitted that the 1st Respondent complied with the provisions of Section 40 of the Employment Act on redundancy. It was submitted that if the Court were to find there was a procedural lapse the award should be for only one to 3 months pay as the Claimant had only worked for the 1st Respondent for 1 year 10 months and is currently gainfully employed as a consultant. Reliance was placed on the cases of **Charles Nyamohanga v Action Aid International [2015] eKLR** and **Addah Adhiambo Obiero v Ard Inc [2014] eKLR**. The 1st Respondent submitted that the 14 years loss of earnings claim has no legal basis as Section 49 of the Employment Act has no provision for payment of loss of earnings up to retirement age. The cases of **CMC Aviation Limited v Captain Mohamed Noor [2015] eKLR** and **Abraham Gumba v Kenya Medical Supplies Agency [2014] eKLR**. The 1st Respondent submitted it was justified in abolishing the Claimant's position to streamline its business in the environmental science department and that it did so in accordance with the applicable provisions of the Employment Act.

14. The matter essentially revolves around two key issues:-

- i. Whether the Claimant was declared redundant in accordance with the law
- ii. Whether the Claimant was defamed by the 1st Respondent's email to its customers

15. The Claimant asserts that he was terminated in the most callous of fashions. He states that he reported back after the December and January break over Christmas and New Year's and given a shocking send off from the job he had done for 20 plus years. He stated that it was humiliating to walk around with the clearance form seeking signatures. He states it was abrupt and disconcerting given it was the start of a new year, there were children and dependents and that he was further humiliated by the thorough search as he left the premises. He indicated that this was further compounded by the email that was sent to the Respondent's clients. He asserted that the email was defamatory and denied him a livelihood by shutting doors on his quest for employment after the dismissal. He thus sought the remedies enumerated in his claim. The Respondents on their part assert that the Claimant is non-suited against the 2nd Respondent and that the Claimant was declared redundant in accordance with the law and as such is not entitled to the remedies he seeks. The 1st Respondent states that the Claimant was duly notified, was in the picture and that the searches at the gate are routine for all staff and was not an exception. The 1st Respondent stated that the Claimant was given an option to serve notice but he declined and left. I will deal with the issue of defamation first. Defamation is defined by the **Black's Law Dictionary Ninth Edition** as 1) the act of harming the reputation of another by making a false statement to a third person or 2) a false written or oral statement that damages another's reputation. The ingredients to my mind are that there must be either an oral or written statement that harms another person's reputation. There is a presumption that there is a reputation and as the Claimant has not demonstrated lack of a reputation then it follows he could be defamed. The Claimant states there was damage to his reputation by publication of an email to the clients of the Respondents. He however did not produce the email nor did he obtain one of the alleged recipients of the defamatory email to testify on his behalf. He also did not call any witness who would have confirmed that upon hearing or reading the defamatory material his perception of the Claimant was thereby affected. In my view, the Claimant failed to discharge his burden to prove he was defamed. I would hold that it would seem there was a communication made by the 1st Respondent but even the redacted version produced in Court did not shed any light on whether there was defamatory content in the communication. I would dismiss the claim under this head.

16. The Claimant was declared redundant. That was common ground. The Claimant asserts it was illegal and unfair while the 1st Respondent

asserts the law was followed and the dismissal was therefore justifiable and properly executed. It was asserted that there was adherence to the law. The Employment Act makes provision as to what is to be done when declaration of redundancy is contemplated. Section 40 provides as follows:-

40.(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—

(a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

(2) Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part VIII in which case that Part shall be applicable.

17. The law is clear. There is a plethora of steps to be taken. These are at letters b), c), e), f) and g) of Section 40(1). Where an employee is not a member of a trade union, the law contemplates that the employer will notify the employee personally in writing and the labour officer. Additionally, the employer should have due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy in the selection of employees to be declared redundant. Where the employee who is declared redundant has leave due, the employer has paid off the leave in cash and the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice and finally, that the employer has paid to the employee declared redundant, severance pay at the rate of not less than fifteen days pay for each completed year of service. In the Claimant's case, it was stated that the notification was made on 13th January 2011 and it was with immediate effect. Put differently it was not with notice. This is quite different from what the law provides. In addition, there was no payment made. The provisions of Section 40 seem to have been abridged with abandon by the 1st Respondent. In the Court's view this was not in accord with the law. The Claimant is therefore successful as far as the declaration that his termination was unlawful. There was a procedural lapse in that regard. The Claimant claims what is increasingly being referred to as anticipatory earnings. The Claimant anticipated that he would serve the 1st Respondent diligently and with no hitches until retirement. He thus seeks the pay for 14 years. In the case of **D. K Njagi Marete v TSC [2013] eKLR** my brother Rika J. while dismissing the claim by the Claimant in relation to future earnings stated that the Claimant was not entitled as he would not have rendered any service to the Respondent for those years and the claim was therefore untenable. I cannot grant any salaries for the future. I can only award what is permitted in law and Section 49 of the Employment Act sets out the parameters. In the case before me, the Claimant had been abruptly sent home on a matter that the employer had had time to reflect and make determination on. In my view, the unlawfulness of the action would attract censure as the 1st Respondent had a clue and chose to shut its eye to what the law provides. The Claimant was stated to be away over the Christmas holidays and he ought to have been notified prior to the redundancy being declared. Though the dismissal was shocking to the Claimant, it is common to have searches as one exits and nothing has been laid before the court to suggest his treatment was anything but proper. There was even a security guard who empathized with him as he left. I do not think the guards were meant to just open gates and let people have access or exit the premises. In the final result, I enter judgment for the Claimant against the 1st Respondent as follows:-

i. One month's salary in lieu of notice Kshs. 563,765/-

ii. 13 days worked in January 2011 Kshs. 244,298.16/-

iii. Compensation for unlawful dismissal 3 months Kshs. 1,691,295/-

iv. Costs of the suit

v. Interest on i), ii) and iii) above at Court rates from date of judgment till payment in full

vi. Sums in i), ii) and iii) above to be subject to statutory deductions in terms of Section 49 of the Employment Act

vii. Certificate of service in terms of Section 50 of the Employment Act.

Orders accordingly.

Dated at Nairobi this 11th day of August 2016

Nzioki wa Makau

JUDGE

Delivered at Nairobi this 18th day of August 2016

Linnet Ndolo

JUDGE