



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 847 OF 2012

ENG. MESHACK M. SABOKE CLAIMANT

VERSUS

CHAIRMAN BOARD OF DIRECTORS

(NATIONAL WATER CONSERVATION &

PIPELINE CORPORATION) 1ST RESPONDENT

PERMANENT SECRETARY MINISTRY

OF WATER AND IRRIGATION 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

Mr. Ongicho for the Claimant

Mr. Malonza for the 1st Respondent

Mr. Silu for the 2nd and 3rd Respondents

JUDGMENT

1. The Claimant Eng. Meshack M. Saboke filed a memorandum of claim dated 18th May, 2012 on 23rd May, 2012 seeking various reliefs against the 1st Respondent, Chairman Board of Directors (National Water Conservation & Pipeline Corporation), the 2nd Respondent is the Permanent Secretary Ministry of Water & Irrigation and the 3rd Respondent is the Hon. Attorney General.
2. The Board filed its Statement of Response dated and filed on 2nd July, 2012 whereas the 2nd and 3rd Respondents filed their Joint Statement of Response dated 10th December, 2012 on 19th December, 2012.
3. The Claimant filed a reply to the Board's Statement of Response on 15th November, 2012.
4. On 28th January, 2010, he was summoned to appear before the Human Resource and General Purpose (HR & GP) Committee of the Board wherein certain allegations of financial management were verbally

levelled against him.

5. It was alleged that he had signed blank cheques and left them with certain staff members while he was on a mission abroad. That those cheques were used by the said staff members to defraud the Corporation of large sums of money.

6. The Claimant admitted signing blank cheques but denied participation in any fraudulent activities.

7. He also denied any failure in providing leadership and putting in place prudent financial management systems at the Corporation, being further charges levelled verbally against him.

8. The Claimant requested for written charges to be able to respond to them appropriately.

9. On 19th February, 2010, the claimant was served with a notice to show cause with particulars of charges levelled against him to which he responded in writing on 24th February, 2010 denying all the charges.

10. The Claimant states that he did not hear from the Human Resource and General Purpose (HR & GP) Committee nor the Board until he wrote to the Board on 5th September, 2011, enquiring on the status of investigations.

11. Claimant's case

The Claimant relies on his sworn Statement dated 13th June, 2013 augmented by the pleadings and oral testimony.

12. The nub of his case is that he was employed by the Ministry on 28th September, 1987 as an Assistant Engineer on permanent and pensionable terms vide letter dated 3rd September, 1991. On 26th May, 1989, he was seconded to the Corporation where he worked in various capacities until he was appointed as the Managing Director on 31st October, 2008 on a three (3) years contract renewable upon expiry.

13. The contract contained the terms of his service and engagement with the Corporation.

14. The Claimant served as the Managing Director of the Corporation for 12 months until the Minister for Water and Irrigation dissolved the Board on 30th October 2009 and sent the Claimant on compulsory leave vide a letter by the 2nd Respondent dated 30th October, 2009.

15. It is the Claimant's case that compulsory leave was not a term contained in his contract of service nor is it a term known in Public Service Scheme Code of Regulations. The claimant handed over to the person named to take over from him.

16. The letter provided that the compulsory leave was prompted by the ongoing investigations at National Water Conservation and Pipeline Corporation which have been necessitated by the allegations of financial irregularities.

17. That the Claimant had good work relationship with the Board of Directors and at no time did the Board have a question on his integrity and performance.

18. That during the period of compulsory leave and without notice, the 1st Respondent withdrew Claimant's benefits namely commuter allowance and consolidated allowance amounting to a sum of Kshs.80,000.00 with effect from December, 2009 to April, 2010.

19. That as from May, 2010, the Claimant's salary was stopped and in an attempt to get it sorted out the Claimant wrote to the 1st Respondent on 24th June, 2010 but there was no response, a clear indicator of

bad faith.

20. That the Claimant was informed by his Advocates on record after filing the Memorandum of Claim and serving the Respondents, the 1st Respondent had attached in the Memorandum of Response a letter of summary dismissal dated 4th May, 2010.

21. That the Claimant was not aware of this letter and the same was not served upon him hence the claim for prolonged unlawful compulsory leave amounting to termination.

22. That the purported summary dismissal was unlawful and unfair *ab initio*.

23. Furthermore, he remained an employee of the Ministry on permanent and pensionable basis and had not received any correspondence nor a letter of dismissal from the Public Service Commission.

24. With regard to the validity of the reason for the summary dismissal by the Corporation, the Claimant notes he had indicated that the signature in the alleged fraudulent cheques Nos. 13907, 13908, 13909 and 13910 totalling to Ksh.26,220,060.00 drawn in favour of M/s Elburgon Stores; Welcome Car Hire and Transports, Comford General Contractors and Volex Contractors were forgeries except the signature in cheque No. 013910.

25. Furthermore, payment of the cheques were stopped except cheques Nos. 013906 and 013907.

26. That this notwithstanding, the 1st Respondent relied on the letter of dismissal on this erroneous information as the reason for the dismissal of the Claimant.

27. That had the Board called him to a hearing before dismissing him, he should have explained this clearly to them.

28. The allegations of failure to provide leadership were also not proved since the Board did not substantiate the same nor provide the claimant with a hearing to deny the same.

29. The Claimant further states that, the allegations by the Board, that it had lost confidence in the work of the Claimant, yet it had failed to meet him prior to arriving at that decision is evidence of bad faith and unfair treatment. That the Board relied solely on unfounded and spurious information and by so doing arrived at a flawed conclusion to the loss and detriment of the Claimant.

30. The Claimant states that he had risen to the apex of his career as a Managing Director and the manner of termination has resulted in a premature curtailment of his career at the age of 47 years.

31. He has been immensely embarrassed and humiliated and has lost sense of self-worth. He has lost his only source of income and is unable to meet his family and social obligations and claims compensation for bad faith and damages for career destruction.

32. The Claimant seeks reinstatement/re-engagement to his previous position and in the alternative he claims payment of;

(i) 18 months unserved term of his contract in the sum of Ksh.8,280,000.00

(ii) Withheld allowances from December, 2009 – April, 2010 as outlined in the Statement of Claim and written submissions in the sum of Ksh.520,000.00

(iii) In lieu of unutilized leave days (110) in the sum of Ksh.1,686,666.67 records which are in the possession of the 1st Respondent.

(iv) Gratuity at 31% of the basic salary for

1st year - Kshs.1,116,000.00

2nd year - Kshs.1,190,400.00

3rd year - Kshs.1,264,800.00 –**Total- Kshs.3,571,200.00**

(v) 24 months notice in the sum of Kshs.11,040,000.00 calculated at Ksh.460,00 per month

(vi) Unexpired period to retire at 60 years, the current public Service retirement age in the sum of Kshs.60,720,000.00 (11 years).

(vii) Medical Cover Insurance (inpatient/outpatient cover 2010 – 2011 & 2011 & 2012) Ksh.548,610.00

(viii) Pension as per scheme

33. 1st Respondent's Response

The 1st Respondent relies on its Statement of Response and the evidence of RW1 Margaret Latemo, RW2 David Jakaiti and RW3 Florence Mukonyo Musau. RW2 and 3 filed sworn statements dated 17th July, 2013.

34. RW1 and RW2 testified in court on 9th April, 2014 whereas RW3 testified on 17th July, 2014.

29. The evidence by RW1, 2 and 3 may be summarized as follows;

1. The Claimant was the Managing Director of the 1st Respondent by virtue of the three year contract of service.

2. It was implied in the contract that the Claimant still remained an employee of the 2nd Respondent on permanent and pensionable terms since he was on secondment to the 1st Respondent.

3. The 1st Respondent had authority to terminate his services by virtue of the contract of service.

4. The 1st Respondent received the concurrence of the 2nd Respondent on the termination by virtue of the secondment.

5. That the termination was lawful and fair because;

(a) On 22nd January, 2010, the Claimant was invited to appear before the Human Resource and General Purpose Committee (HR & GPC) to defend himself against charges arising from Audit Investigation malpractices in payments.

(b) The Claimant appeared before the Committee on 28th January, 2010 and admitted signing blank cheques prior to embarking on official duties abroad. That these cheques Nos. 13907, 13908, 13909 and 13910 had been signed by him and were used in his absence to make fraudulent payment as stated in the judgment earlier.

(c) That the onus was on the Claimant to prove that his signature was forged but he had failed to do so.

(d) Furthermore Kshs.9,280,000.00 had been fraudulently cashed a day before a fire tragedy which occurred at the Corporation.

- (e) That the Claimant did not report the alleged forgery of his signature and fraudulent payments prior to the commencement of the investigation by Efficient Monitoring unit (EMU).
- (f) That this omission is indicative of his connivance with others implicated in the financial malpractices.
- (g) That the Human Resource and General Purpose Committee (HR & GPC) made recommendations to the full board, which adopted the resolutions by the Committee on 10th February, 2010.
- (h) That the Committee, inspite the admission made by the Claimant had on 19th February, 2010 written a show cause letter to the Claimant.
- (i) On 24th February, 2010, the claimant replied to the notice to show cause.
- (j) On 23rd April, 2010, the Board deliberated on this Response by the Claimant, in his absence inter alia, and was dissatisfied with the response and resolved that the Claimant be dismissed from service subject to the concurrence of the Ministry of Water and Irrigation.
- (k) The concurrence was necessary since the Ministry remained the principal employer of the Claimant. The 1st Respondent received the concurrence of the Ministry by a letter dated 3rd May, 2010. The Ministry accepted the decision of the Board to summarily dismiss the Claimant from the employment of the Corporation. The correspondence between the Board and the Ministry was produced as evidence before court.
- (l) A letter dated 9th September, 2011, from RW1 indicates that the Ministry had not concurred with the Board's decision. However, in her testimony before court, she said she had not seen the memo dated 3rd May, 2010 in which the Ministry had concurred until she came before court.
- (m) That the 1st Respondent wrote a letter of summary dismissal dated 4th May, 2010 and sent it to the last known address of the Claimant. The Claimant was dismissed for misconduct in terms of Section 11.22, 11.24.5 and 11.34 of the Code of Regulations of the Corporation and Section 44(4)(c) and (g) of the Employment Act, 2007.

35. The 1st Respondent urges the court to dismiss the claim with costs.

36. Reinstatement/Re-engagement

The 1st Respondent submits that the Claimant has been replaced by another person.

37. Payment for withheld salary and allowances

The 1st Respondent submits that none is owed to the Claimant.

38. Unutilized leave days

The 1st Respondent submits that any unutilized leave days were forfeited in terms of Clause 12 of the contract of service between the Claimant and the Corporation because no written approval to carry forward was given by the Board.

39. Gratuity

The 1st Respondent submits that since the Claimant was dismissed for misconduct in terms of Clause 14 of the Contract of Service, no gratuity is payable.

40. Reasonable notice of 24 months

The 1st Respondent submits that since the Claimant was summarily dismissed from employment the issuing of notice does not arise. In any event, Clause 26 of the contract provided for 3 months termination notice and/or payment in lieu thereof.

41. Payment for the remaining period till attainment of retirement age of 60

The 1st Respondent submits that this Claimant was employed on a 3 year contract renewable and had therefore forfeited his permanent and pensionable status.

42. Salary for the unexpired period of the contract

The 1st Respondent submits that the summary dismissal was lawful and in any case payment of anticipatory salaries and allowances is untenable and relies on the Decision of Hon. Rika J. in the Industrial Court Cause No. 379(N) of 2009; D.K. Njagi Marete V. Teachers Service Commission (2013) eKLR and HCCC No. 113 of 2002 between Menginya Salim Mungani V. Kenya Revenue Authority, where Hon. Justice Ojwang stated that it would be in judicious to found an award of damages upon Sanguine Assessments of prospects and the Decision of Hon. Radido Stephen J. in ICC No. 146 of 2012, Alphonse Mghanga Mwachanya Vs. Operation 680 Ltd [2013] eKLR where the Judge stated;

“To my mind, Section 49 of the Employment Act is no authority and cannot be the basis for the grant or award of any remedy of damages. In my considered view Section 49(4)(f) of the Employment Act cannot be the legal basis of making an award of damages where a fixed term contract has been terminated prematurely or not been renewed. It just provides one of the factors to consider in granting any or all of the primary remedies set out in section 49(1) and (3) of the Employment Act.”

43. Medical Insurance Cover

The 1st Respondent submits that medical insurance cover is a benefit contingent upon continued employment of the claimant and therefore the same is not payable and cannot be redeemed when employment ceases. The claimant was under a medical cover until his dismissal on 4th May, 2010.

44. The 1st Respondent submits that the entire claim be dismissed with costs.

45. Response by the 2nd and 3rd Respondents

The 2nd and 3rd Respondents have taken the view that the Claimant was not dismissed from his employment nor has his case ever been referred to the Public Service Commission for any disciplinary action.

46. This position is contained in the Statement of Response by the 2nd and 3rd Respondents and in the joint written submissions dated 28th November, 2014 and filed on 3rd December, 2014

47. Indeed RW1 submitted that she was unaware of the letter of concurrence by the Ministry with the summary dismissal of the Claimant by the 1st Respondent until she saw the purported concurrence in court.

48. The effect of the position taken by the 2nd and 3rd Respondents is that since the Ministry was the principal employer of the Claimant and has not dismissed the Claimant from his employment to date, the

claimant remains in the employment of the 2nd Respondent.

49. The 2nd and 3rd Respondents urge the court to dismiss the Claimant's case against the 2nd and 3rd Respondents.

50. **Issues for determination**

From the statement of issues contained in the submissions by the parties, the court delineates the following issues for determination;

(A) Did the Corporation have authority to summarily dismiss the Claimant?

(B) Was the termination substantively and procedurally fair?

(C) If the answer to (B) above is in the affirmative, did the termination sever the Claimant's employment with the 2nd Respondent?

(D) If the answer to (C) above is in the negative, what is the status of the employment of the claimant vis a vis the 2nd Respondent?

(E) Is the Claimant entitled to the reliefs sought against the 1st, 2nd and 3rd Respondents?

51. **Determination**

Issue A

The Claimant was seconded to the 1st Respondent by a letter written by the Managing Director of the Corporation dated 22nd February, 1989.

52. The secondment was approved by the Permanent Secretary of the Ministry of Water Development and Personnel Management. The appointment was an Engineer grade 2.

53. The Claimant was obliged to accept the offer of secondment before transferring his services to the Corporation which he did.

54. As an employee of the Corporation, the Claimant was subjected to the Corporation's Rules and Regulations including disciplinary code contained under Part II thereof.

55. The elevation to the position of Managing Director of the Corporation under Clause 22 & 25 further obliged the Claimant to observe the Corporations' Rules and Regulations and in particular subjected him to the Employment Act, 2007 and to the Corporation's Staff Rules and Regulations.

56. Under Clause 26, termination of the Claimant's services was to be by either party giving a three months prior notice or payment in lieu thereof.

57. Clause 27 in particular states;

“This offer and your acceptance thereof will constitute a binding contract between you and the Corporation. This Agreement supersedes all other agreements and/or arrangements hitherto entered between you and the Corporation.”

58. It is the court's considered view that the Claimant ceased to be an employee of the 2nd Respondent as soon as he accepted and signed the contract between himself and the Corporation. Furthermore, the Claimant bound himself to the terms and conditions of service of the Corporation including the Rules and Regulations dated December, 2006.

59. The disciplinary code under Part II thereof was applicable to him.

60. The court therefore answers Issue 'A' in the affirmative, that the Corporation had authority to discipline the Claimant and to terminate his services.

61. The said termination is to be guided by the contract document itself and the staff Rules and regulations and the Employment Act, 2007.

62. Issue C and D

The question whether the employment of the claimant in the position of Managing Director of the Corporation severed his relationship with the 2nd Respondent is complicated one.

63. The contract document between the Claimant and the Corporation did not make any reservations with respect, to the claimant's previous employment with the Ministry.

64. Whereas, the initial secondment to the Corporation as Engineer II appear to have reserved the position of the Ministry as the principal employer, this does not appear to be the case with respect to the position of the Managing Director, whose terms and conditions are within the four corners of the contract document.

65. To the extent that the Claimant was no longer a permanent and pensionable employee, but was under Clause 14 of the contract titled 'Gratuity' entitled to payment of 31% of his basic salary as gratuity upon completion of the contract and the contract was renewable upon application within 6 months before its expiry, the contract was incompatible with the earlier secondment of the Claimant to the Corporation.

66. It is the court's considered view that the claimant is entitled to the pension arrangements with the ministry and the Corporation prior to his employment on contract terms. The termination of the contract could not affect the accrued pension prior to the signing of the contract but any such obligations between the Claimant and the 2nd Respondent ceased during the tenure of the three (3) year contract.

67. The court therefore answers Issues C and D by making a finding that the fixed term contract severed the previous employment relationship between the Claimant and the 2nd Respondent subject to any accrued obligations such as payment of pension.

68. The concurrence by the 2nd Respondent to the termination was in the court's view superfluous to the extent that the Claimant had ceased to be an employee of the Ministry from the date of the contract between himself and the Corporation and assumed the position of Managing Director but subject to full payment of his accumulated dues under the previous arrangement.

From the above exegesis, it is clear that the moment the Claimant entered into a three (3) year fixed contract employment relationship with the 1st Respondent his previous contractual relationship with the 2nd Respondent ceased except for the payment of terminal benefits; including pension as and when the same became due.

70. To that extent the court finds the 1st and 2nd Respondents liable to compute those previous terminal dues and pay accordingly.

71. Issue B

The issue as to whether the summary dismissal of the claimant by the 1st Respondent was lawful or not is governed by the terms of the contract document the Rules and Regulations of the 1st Respondent and the Employment Act, 2007.

72. We have already analysed the sequence of events leading to the summary dismissal and indicated the

provisions of the Rules and Regulations of the Corporation and the law relied upon by the 1st Respondent in reaching the decision to summarily dismiss the Claimant from the position of Managing Director.

73. The 2nd Respondent dissolved the Board of Directors of the 1st Respondent and placed the Claimant on compulsory leave with salary, less certain allowances. To this extent, the 2nd Respondent had indirect authority over the Claimant even though the 2nd Respondent was not party to the fixed term contract.

74. The Claimant was summoned to appear before the Human Resource and General Purpose (HR & GP) Committee for questioning following an Audit report that indicated that there was mismanagement of Corporation funds with respect to certain payments made using cheques that the claimant had signed while they were blank.

75. Subsequently the Board directed the Claimant to answer two charges with respect to the specific payments and failure to provide leadership to the Corporation. In this respect, the Claimant was served with a letter to show cause.

76. The claimant answered the show cause letter in writing.

77. The Board considered the Claimant's response in his absence and decided to summarily dismiss him.

78. **The Law**

The court has looked at the disciplinary procedure contained in the Corporation's Rules and Regulations and was unable to find any specific clause relating to the discipline of the Managing Director.

79. Though the contract by the parties made reference to the Rules and Regulations, it would appear that the same does not have express provisions dealing with the manner of disciplining the Managing Director.

80. However, the contract document also refers to the provisions of the Employment Act, 2007 with respect to the discipline of the Managing Director.

81. Indeed, the Claimant was dismissed in terms of Section 44(4)(c) which provides for the summary dismissal of an employee if;

“An employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;”

82. The Claimant strongly denies the allegations made against him in his written response adding that the failure by the Board to grant him a hearing to further explain the charges levelled against him was unprocedural and unfair.

83. The Claimant states that he had served the Corporation for one year and had began to turn around the fortunes of the Corporation.

84. That the staff in the financial department had forged his signature to make the questionable payments except in respect of one cheque, yet he was found guilty of gross misconduct without giving him opportunity to be heard on these matters.

85. The Claimant alleges bad faith and bias by the newly installed Board of Directors headed by an Acting Managing Director who were keen to sweep him aside and take over.

86. Section 41(2) of the Employment Act provides;

“Notwithstanding any other provisions of this part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under Section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”

87. A literal interpretation of this provision makes it mandatory for an employer before summarily dismissing an employee on stated grounds as happened to the Claimant to;

(a) grant the employee a hearing

(b) consider any representations which the employee and/or his chosen representative at the hearing may make before arriving at a decision to terminate the employment or summarily dismiss the employee.

88. From the totality of the evidence before court, this did not happen.

89. The service of the letter to show cause and the written response by the Claimant was not a substitute for the mandatory hearing provided under Section 40(2) of the Employment Act, 2007.

90. I have stated elsewhere that, the court cannot second-guess what would have been the outcome had the employer granted the Claimant the hearing demanded by the law. Once the employer fails to follow this mandatory procedure, the termination or the summary dismissal becomes substantively and procedurally unfair.

91. The Claimant has demonstrated that there were issues in dispute regarding the alleged misconduct which would have been cleared to the satisfaction of the employer, had the claimant been given opportunity to appear before them.

92. To this extent, the Claimant has demonstrated that, there was no proven justifiable reason to summarily dismiss him from the position of Managing Director.

93. The Claimant has also demonstrated that the summary dismissal was not sanctioned by the 2nd Respondent, if indeed this was a requirement to be met.

94. In the converse, the Respondent has not discharged its onus in terms of Section 43(1) of the Act, which provides;

“In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.”

95. Section 45(1) provides that;

“No employer shall terminate the employment of an employee unfairly”

Whereas Section 45(2) provides;

“A termination of employment by an employer is unfair if the employer fails to prove;

(a) that the reason for the termination is valid;

(b) that the employment was terminated in accordance with fair procedure.”

96. The 1st Respondent has failed in both respects and the court finds that the summary dismissal of the Claimant from the position of Managing Director of the 1st Respondent was substantively unlawful and

procedurally unfair.

97. The claim therefore succeeds in this respect.

98. **Issue E**

What remedies are available to the Claimant?

(1) **Reinstatement**

The employment contract of three (3) years which commenced on 31st October 2008, was due to expire on the 31st October, 2011. The claimant only served one year of the contract before the same was unlawfully and unfairly terminated.

It is not possible to reinstate the Claimant to his job as the Managing Director of the 1st Respondent.

99. The Claimant however had legitimate expectation to serve the full term of the contract, though the same was amenable to lawful termination on three months' notice by either party or payment in lieu thereof. See I.C.C. at Nairobi, Cause No. 2093 of 2011 Jackline Kwamboka V. Energy Technic Ltd per Marete J. and I.C.C. at Nairobi, Cause No. 1168 of 2012 Pravin Bowry V. Ethics & Anti-Corruption Commission per Nduma J.

Since the contract was unlawfully terminated, the court obligates the 1st Respondent to specific performance of the contract and finds that the 1st Respondent is liable to pay the Claimant the full salary for the unserved period of the contract being 18 months at Kshs.460,000.00 = Kshs.8,280,000.00

100. The 1st Respondent withheld allowances payable to the Claimant from December, 2009 to April, 2010 being commuter allowances of Ksh.20,000.00 x 5 months = Kshs.100,000.00 Consolidated allowance of Ksh.60,000 x 5 = Kshs.300,000.00

The court awards the Claimant Ksh.400,000.00 in respect thereto.

The claim for underpayment during the period is untenable as the pay raise had not accrued to the claimant yet.

101. **Leave Days**

The claimant had served only 12 months of the contractual term. He was entitled to 30 days leave per annum. The Claimant is entitled to payment of one month's salary in lieu of leave in the sum of Ksh.460,000.00.

The rest of the claim in respect of leave days has not been sufficiently proved.

There is no evidence that the Board had authorized the Claimant to carry over 110 days leave days. In terms of the Rules and Regulations of the Corporation, failure to obtain such authority led to forfeiture of the leave days.

102. **Gratuity**

In terms of the contract of service, the Claimant was entitled to 31% of basic salary as gratuity upon successful completion of each contract term. The court has found that the contract was unlawfully and unfairly terminated by the 1st Respondent. The 1st Respondent is liable to pay gratuity for the completed term of the contract in the sum of Ksh.1,116,000.00. Gratuity for the unserved term is not payable.

103. **Notice Pay**

The Claimant was not given notice of summary dismissal. As a matter of fact, the claimant had to come to court before the letter of summary dismissal was provided to his advocates. The Claimant is entitled to payment of three (3) months salary in lieu of notice in the sum of Ksh.460,000.00 x 3 = Kshs.1,380,00.00.

104. Payment till retirement at 60

The claimant had ceased to work on permanent and pensionable terms, upon conclusion of a fixed term contract. The claim for payment of salary till retirement age of 60 is misconceived and same is dismissed. However, the 1st and 2nd Respondents are liable to pay to the Claimant accrued terminal benefits under the prevailing Pension Scheme up to and including the 31st October, 2008 when the Claimant started working on fixed term contract basis. The 1st and 2nd Respondents are directed to compute the terminal benefits payable in this respect within 30 days of this judgment and file the same with the court for consideration and appropriate award.

105. Medical Insurance Cover

The Claim for medical insurance cover is misconceived in that the claimant has not presented any medical bills paid by himself and/or his family during the period he was placed under compulsory leave till the date of summary dismissal.

The claim has no basis and same is dismissed.

106. Compensation

The various claims for compensation for the unlawful and unfair treatment accorded the claimant by the 1st Respondent have been taken care of by the award for payment of salary for the unserved term of the contract.

The court has taken into account that the lumpsum award will ameliorate the pain and suffering, including stunted career progression, public embarrassment and humiliation meted on the claimant. Accordingly, the court makes no further award in this respect.

Total Award to the Claimant against the 1st Respondent is Ksh.11,636,000.00.

In conclusion and for the avoidance of doubt, the court's award is made against the 1st Respondent except with respect to the payment of the terminal benefits/pension for the period prior to 31st October, 2008 when the claimant started working on fixed term contract which is specifically made against the 2nd and 3rd Respondents

The award against the 1st respondent is payable with interest at court rates from the date of this judgment till payment in full.

The 1st Respondent is to meet the costs of the suit incurred by the Claimant.

Dated and Delivered at Nairobi this 30th day of January, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE