



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 42 OF 2014

SUSAN WANJIRU MWANGICLAIMANT

VERSUS

KENYA PORTS AUTHORITYRESPONDENT

J U D G M E N T

INTRODUCTION

1. **The claimant brings this suit claiming Ksh.4,706,251.14 being employment benefits plus compensation for unfair termination of her employment by the respondent on 5/10/2011. It is the claimants case that her dismissal was substantively and procedurally unfair vis a vis the provisions of the Employment Act and the respondents Disciplinary Handbook 2008. She denied any wrongdoing before her dismissal and maintained that she was denied fair hearing.**

2. The respondents has on the other hand denied liability for the alleged unfair and wrongful dismissal of the claimant and averred that the dismissal was both substantially and procedurally fair. It is the defence case that the claimant was dismissed for gross misconduct and poor performance of her duties which caused a loss of 16 million to the respondent. It is further defence case that the dismissal was done after affording the claimant a fair hearing.

3. The suit was heard on 4/9/2014 and 6/11/2014 when the claimant testified as Cw1 and the respondent called Saidi Mata Hamisi and Prisca Atieno Rabongo as RW1 and 2 respectively. After the close of the hearing both parties filed written submissions for considerations in this judgment.

CLAIMANT'S CASE

4. CW1 explained that she was employed by the respondent on 2/2/1989 as a clerk and rose the ranks to the Assistant Superintendent Export on 7/10/2004. Her gross salary was ksh.136,545 as per the payslips for September 2010. She was reporting to the Export Superintendent who was reporting to the Principal Operations Officer (ship) who in turn reported to the container Terminal Manager. The department was operating 24 hours in 3 shifts starting 6am to 2.45, 3pm to 6pm and 11pm to 6am. CW1 worked in the 6 a.m – 2.45 pm shift only as the in charge but senior clerical officers were in charge of the other two shifts. The Export superintendent worked upto 8pm. CW1 was also not on duty all the time because occasionally she secured leave of absence to pursue studies like January and September 2010.

5. CW1 told the Court that the operations in the department is done through a special computer software called KWATOS. The system was intended to fast-track operations at the port of Mombasa which

previously was done manually. A few senior officers were trained at first but later other junior staff were trained to raise the users to about 1200. The KWATOS connected Mombasa, Kisumu and Nairobi so that data can be accessed through hundreds of computers. CW1 was in charge of 40 workers all able to use KWATOS. The users were issued with raw passwords by the Systems Administrator through supervisor like herself. Once the user received the raw password, he or she changed it to a secret password which no other person could use.

6. CW1 explained that the procedure for handling export containers through KWATOS system involves the following ten steps.

- i. Customer lodges a document on line in the KPA KWATOS website.
- ii. The document is captured by KPA database at the container terminals.
- iii. The document is interfaced, that is, details are validated and then passed to the finance division.
- iv. The document is received by the finance division.
- v. Payment is done by the customer at the finance division and the system updates by feeding the invoice number and check mark to confirm payment.
- vi. The customer then goes to the container terminal to seek approval of entry of the cargo. The approval can be given by either the export superintendent, CW1 or berth records clerk.
- vii. Thereafter the customer goes to the port gate with the container documents where validation is done again by the gate export clerk, police, KPA security and KRA (customs).
- viii. The cargo is then received at the KPA yard by the yard clerks.
- ix. The documents are then handed over to the berth records clerks at the Export for preparation of the loading list.
- x. Loading list is then updated daily until the cargo is ready for loading.

According to CW1, all the data is stored in the KWATOS database and is accessible to all the KWATOS users. She explained that the information in the database could be altered at a fee upon request by the customer for example the names of the vessels or deleting some containers from the loading list. CW1 explained that she was appointed a Super User of KWATOS in 2004 and maintained that one of her duties was to alter or delete the information in the system at the request of customers at a fee.

7. CW1 explained that on 5/10/2010, she resumed duty from leave and received a phone call from Principal Operations ship (POO ship) telling her to respond to an email dated 5/10/2010, which was inquiring whether payment had been made for a shipment which had been made in September 2010 while she was away. CW1 checked from the system and the hard copies in export office and confirmed that the charges from the shipment had been duly secured. She also verified the validity of the pre-advise and responded to the email confirming that the payment had been made and that the pre-advise were valid.

8. CW1 continued with her duties until 15/10/2010 when she was served with a show cause letter (charge sheet) by the POO ship. The charge sheet referred to an Audit report done on 8/10/2010 and it accused her of poor supervision and negligence that allegedly led to loss of kshs.7.9 million by the company. CW1 was also accused of misleading POO ship and the Terminal Manager vide her email dated 5/10/2010. CW1 responded to the charges by her letter dated 18/10/2010 denying all the accusations. On 29/10/2010 she was served with an interdiction letter dated 22/10/2010 by the Administrator Container Terminal which directed her to be reporting to the Employee Relations Officer every Monday and Friday during the interdiction period. She was also to receive half salary. On

28/2/2011 CW1 received a further charge of stealing computer CPU from the Container terminals of which she was directed to give her answer during the pending inquiry.

9. On 10/5/2011 CW1 received a letter erroneously dated 5/5/2010 inviting her to a personal hearing before a committee of inquiry. CW1 contended that she was never shown any Audit reports during the hearing and even before. She also contended that she was never interviewed by the Auditors or at all about the alleged fraud at the port. On 13/10/2011 CW1 was served with a dismissal letter dated 5/10/2011 and thereafter appeared to the respondent managing director (MD) on 27/10/2011. CW1 contended that the appeal was never heard prompting her to serve a demand letter through her advocates on 24/6/2013 asking for a hearing.

10. CW1 told the court she has not secured any other gainful employment since her dismissal and prayed for reinstatement to her employment because she did not do anything wrong to warrant dismissal from work. She also prayed for Ksh.805,534.82 being her half salary that fell in arrears during her interdiction between October 2010 and October 2011. She also prayed for Ksh.9.167 being salary for the 5 days worked in October 2011. She further prayed for ksh.204,818 being pay in lieu of 45 leave days not utilized. If reinstatement is denied she prayed for 3 months salary lieu of notice based on her employment contract plus Ksh.1,638,547 being 12 months salary for unfair termination of her employment. According to CW1, she did not temper or authorize anyone to tamper with any shipping document on 24/9/2010 because that time she was on leave. She maintained that it was Ceaser Obilo who tampered with the document. She maintained that the KWATOS system was accessible to many people via computers during the 3 shifts. She denied stealing the computer CPU and explained that on 25/10/2010 she took the computer to the IT section for upgrading and returned it and that all the movement was recorded in the security register. She did not see any point of stealing the CPU because all the information in the CPU was available in the KWATOS database.

11. On cross examination by the defence counsel, CW1 admitted that her basic was ksh.75840. She maintained that as a Super User she had the mandate to change data in the KWATO System upon request by the customer, and at a fee. She however denied that she had the capacity to control or change passwords for other users. She explained that if her juniors had problem with password, they reported to her and then she would report to the IT Administrator to issue another password. The new password was raw and such the junior office would change it to another secret password. She denied ever telling her clerks to use a common password. She denied ever seeing the Auditor's report. She denied ever participating in the fraud indicated in the audit report and statement of RW1. She denied ever validating the booking amendment dated 24/8/2010.

12. CW1 admitted that she was given reasons for his charges and was given a hearing before dismissal. She further admitted that the letter for dismissal also stated the reason for the dismissal. CW1 however maintained that the reasons for the dismissal were not valid and fair and prayed for reinstatement. She admitted that the dismissal letter forfeited her half salary that was withheld during the interdiction. She contended that her outstanding leave pay should be based on gross pay as per the payslips. She maintained that she returned the CPU to her office after taking it for upgrading and insisted that there is record of the return of the CPU at the One-Stop Centre. She contended that any deletion she made concerning containers, the same was done in order to allow the containers to re-enter the port. She concluded by maintaining that there was never any complaint from the finance division resulting from the deletion and no one was ever charged in court for the same.

DEFENCE CASE

13. RW1 is a Senior Internal Auditor for the respondent. In August 2010, RW1 and his team did a routine audit at the container operations and discovered that KPA was losing a lot of money and recommended for further audit. He did another audit in October 2010 and January 2011 with his team. All the audit reports were signed by the Head of Department and not the RW1. The report dated 8/10/2010 recommended for disciplinary action against CW1 for failing to perform her duties as incharge of the Export documentation and for allowing fraud to continue under her watch for a long time even after being alerted by her seniors. According to RW1, old pre-advice were being reused to export new cargo.

14. For example by Berth records dated 24/9/2010, 5 transshipments were stopped at the berth by the POO ship because the charges had not been paid. The shipment documents were for a client called Babukher for 5 containers to be loaded on ER-Elstfleth departing on 29/9/2010. He explained that Mr. Ombilo is the officer who prepared the shipment documents by amending pre-advise allegedly with the advise from CW1. The pre-advise number for the 5 containers was 1280908xi010 meaning that it was lodged by the customer via KWATOS system on 28/9/2008. The same pre-advise was therefore being used to ship out the 5 containers on the ship 2 years later on 29/9/2010. In the opinion of RW1, there was a collusion between the claimants and KPA staff because old pre-advise was being accepted to ship out cargo. RW1 maintained that no port charges were paid for exporting the said 5 containers. On further investigations of the previous records for the said client, (Babukher) the Auditors discovered that he was doing the fraud repeatedly and notified the Terminal Manager who allegedly confirmed to them that a pre-advise could not be re-used under all circumstances. The matter was then left to the Terminal Manager to deal with his junior officers.

15. RW1 demonstrated CW1's involvement in the fraud by explaining that pre-advise number 1091208xi011 was lodged by Kenfreight E.A on 9/12/2008 in a genuine transaction but the same pre-advise was reused on 7/9/2009 through manipulation of the KWATOS system where CW1 changed the vessel schedule from SMNA/2008/1533 to TCZ/2009/0853. The payment type was also changed from C (ledged client) to M (cash client). The forward was also changed from code 1007 to code 555 while the size of the container was also changed from 40 feet to 20 feet. He maintained that CW1 is the one who changed the pre-advise because the user ID or the staff code on the pre-advise was CW1's number 90080.

16. The other example of CW1's involvement in the fraud according to RW1 was in the changing of information in the system in respect of pre-advise number 1161108xi013 which had been lodged on 16/11/2008 by Kenfreight E.A. The container was changed from dummy container number B1A2 to read container MSKU0014801. The payment type was changed from C (ledged client) to M (cash client). The prayer was changed from code 273 to 555 that is from kenfreight EA Ltd to Babukher. According to RW1, the changes were done in July 2009 by CW1 using the staff code 90080. RW1 stated that he was witness before the committee before the committee of inquiry where he presented the final Audit Report dated 17/1/2011 and the list of the members involved in the manipulation of the KWATOS system some of whom were computer illiterate. Lastly, RW1 explained that he learned from the security department that CPU serial number CZC7446604 model HP had gone missing of which the IT department said it allegedly allocated the CPU to CW1 on 15/5/2008.

17. On cross examination by the claimant's counsel, RW1 admitted that Alfred Musyoki is one of staff members who interfered with KWATOS system and he had 2 KWATO user accounts. RW1 further admitted that he never interviewed CW1 before making the audit report dated 23/9/2010. He contended that billing is done by the finance division under SAP system after receiving information from Operations KWATOS system. He admitted that pre-advise 1208309xi1108 was prepared by Julia. He further admitted that pre-advise number 1161108xi013 was genuine. He contended that a pre-advise cannot be deleted but a container can be deleted from the system to allow an earlier imported container to be accepted back into port for export. RW1 admitted that CW1 had the mandate from KPA to delete such containers from the system. He further admitted that once a pre-advise is paid for but not immediately used, the same can be used at a future date. RW1 explained that pre-advise number 1161108xi013 was for dummy containers and when they came to the port they were given real numbers but they were exported fraudulently without payment of the requisite charges. The payer was also charged from code 273 to code 555.

18. RW1 admitted that the KWATO system had major weaknesses because the Steering Committee, Project Manager and the Team leader was not receiving transactional data for daily dealings. He further admitted that the weaknesses in the system led to the fraud and that the said weaknesses in KWATO system had also been experienced in the imports section and led to losses as well without CW1's involvement. He explained that the stamp used in the finance invoice dated 26/8/2010 was fake. He however admitted that the work of collecting charges was under the finance division but maintained that the fraud was in the KWATO system and not SAP system. He admitted further that CW1 was not

among the 2 people highlighted in his statement as having been the ones extremely involved in the manipulation of the KWATO system. RW1 however did not know whether any other person apart from CW1 was dismissed for the said manipulation of the system.

19. On re-examination, RW1 maintained that during a fraudulent shipment the whole KWATO system was not used. Instead RW1 explained that the containers entered the port using already used pre-advises by manipulating the KWATO system and using fake invoices obtained from unknown people outside KPA.

20. RW2 is the HR officer for KPA working in the HR department. Her duties include administration and discipline. She received an internal audit report dated 8/10/2010 which had been addressed to the Chief Operations Manager and HR & Administration Manager among others. The MD endorsed the correspondence to HRM to take immediate action and revert to him in 3 days. In the meanwhile the Chief Operations Manager instructed the Terminal Manager (Head of the Department) to initiate disciplinary action against the staff incriminated by the audit report. A show cause letter was therefore issued to CW1 by the POO ship on 15/10/2010 and CW1 responded on 18/10/2010. In the meanwhile the HR Manager wrote to the MD on 16/10/2010 seeking approval for CW1's interdiction. The MD approved the interdiction and CW1 was issued with interdiction letter dated 22/10/2010 annexing a charge sheet and requiring her to show cause why she should not be dismissed. CW1 responded on 29/10/2010 and did not request for personal hearing as provided for under Section K8 of the KPA's Disciplinary Handbook.

21. The foregoing notwithstanding, RW2 confirmed that a committee of inquiry was constituted at the request of the Personnel Manager to the MD vide Memo dated 7/12/2010. On 17/1/2011 the Chief Internal Auditor Mr. Fredrick Oyugi wrote to the Chief Operations Manager, HR & Administration Manager and the Financial Controller reporting a further loss of ksh.8.3 million which report was forwarded to the committee of inquiry. Again on 4/2/2011, another report was written by the Port Security officer Retired Major Moorooa to the MD recommending disciplinary action against CW1 over the missing CPU which had been allocated her at the port office. The CPU report was likewise forwarded to the committee of inquiry and CW1 was notified to prepare to defend herself on the matter before the said committee.

22. RW2 confirmed that she was the secretary to the committee of inquiry and she invited CW1 for the hearing on 10/5/2011. RW2 further confirmed that CW1 did not bring a co-worker to accompany her in the hearing as requested vide the hearing notice. After the hearing a report dated 26/7/2011 was prepared by the committee and given to the MD through the HR & Administration Manager. The latter forwarded the report to the personnel manager who made another report dated 22/9/2011. Relying on the report prepared by the personnel manager, on 22/9/2011, the MD approved the dismissal of the claimant. The claimant was therefore dismissed vide letter dated 5/10/2011 on ground that the committee of inquiry had found her guilty as charged. The letter also forfeited the claimant's half salary that had been withheld during the interdiction. RW2 confirmed that CW1 received the dismissal letter on 14/10/2011 and maintained that the dismissal was lawful and fair and as such CW1 was not entitled to any compensation or salary in lieu of notice.

23. On cross examination by the claimant's counsel, RW2 denied the existence of Mr. Kamuta as working in equal rank with CW1 and maintained that CW1 was the only Assistant Superintendent Export for KPA. RW2 admitted that the department was operating 24 hours under 3 shifts. She admitted that during the hearing by inquiry committee, CW1 explained that she used to work only in one shift that was ending at 3pm. She further admitted that Section K 7(a) of the KPA Handbook 2008 required that while doing investigations, KPA shall receive statement from the suspected employee. She maintained that the interdiction was proper and CW1 was paid not less than half her salary during the period of interdiction.

24. RW2 explained that over 20 witnesses were heard during the inquiry of CW1's case and CW1 cross examined all of them. She maintained that CW1 was served with the charges vide the interdiction letter but the evidence in support was not availed to her before the hearing. RW2 explained that the committee was composed of 5 members with none from CW1's department. The chairman of the

committee was from Job Group HE2 which was above Job Group HM3. She admitted that the chairman should have been Job Group HM3 and below and at least one member of the committee should have been from CW1's department as per Section K8(v) and the chart on page 22 of the Hand book. RW2 contended that under Section 9 of the Handbook, an employee can be charged or retained but surcharged.

25. RW2 denied any knowledge that CW1 appealed against the dismissal on 27/10/2011. She observed that the alleged letter of appeal lacked a stamp acknowledging receipt. She however admitted that Section K13(d) of the KPA Handbook required that an appeal shall be determined within 30 days after receipt by the office. She maintained that CW1 was charged for failure to perform her duties as the officer in charge Export documentation and for allowing fraud to be done under her watch which led to the loss of ksh.7.9 million. RW2 contended that the show cause letter came from CW1's department and Cw1 responded on 18/10/2010 denying that shew was in charge of the export Documentation Office. RW2 however admitted that the show cause letter did not state that CW1's employment number was used to defraud money. RW1 declined to ascertain that the employees employment number was also used in KWATO system and insisted that she was not competent to prove that. RW2 however maintained that CW1 was aware that her number was being used to perpetrate fraud. RW2 admitted that the show cause letter did not accuse CW1 of generating fake invoices.

26. RW2 further admitted that the mandate of the committee of inquiry was to enquire into the loss of ksh.7.9 million but it proceeded to rely upon the Audit Report dated 17/1/2011 and agreed with th same in its findings. According to RW2, page 2 of the Auditors report required that CW1 and the people using KWATO system be interviewed. RW2 confirmed that other officers and expert witness were called by the committee to give expert evidence and demonstrations. She further confirmed that the report by the Port Security Officer was also used and considered by the committee in making its decision because CW1 had been invited to defend herself on the missing CPU. She admitted that in a normal termination CW1 was entitled to 3 month prior notice in writing. She further admitted that CW1 was entitled to 30 days leave per year.

27. On re-examination, RW2 explained that Section K8 (k) of the KPA's Disciplinary Handbook excluded Head of the accused's department, division or section from the committee of inquiry. She explained that the total loss revealed by the 2 Audit reports amounted to ksh.16.2 million. She further explained that she was not an expert in KWATO system and as such she could not confirm whether the employees number was also her KWATO number. She clarified that CW1 was charged with the use of fake invoices and th generation of fake invoices.

ANALYSIS AND DETERMINATION

28. After considering the pleadings,evidence and the submissions from both sides, there is no dispute that CW1 was employed by the respondent as the Assistant superintendent Export. It is also a fact that she was dismissed form employment by the respondent on 5/10/2011 for gross misconduct namely causing loss of ksh.16.3 to the respondent through manipulation of KWATO system and secondly for losing a computer CPU from the export office in order to destroy evidence. There is also no dispute that before the dismissal, CW1 was served with the reasons for which the employer intended to dismiss her and she was eventually given a chance to defend herself before a committee of inquiry established under Section K8(i) and (m) of the KPA Disciplinary handbook. The issues for determination are whether the dismissal of the claimant from employment on 5/10/2011 was unfair and whether the remedies sought ought to issue.

Unfair termination

29. The burden of proving unfair termination lies upon the employee according to the provisions of Section 47(5) of the Employment Act. Under Section 45 of the said Act, termination is unfair unless it is founded on a valid and fair reason and if it is done without following a fair procedure. On the other hand, the burden of justifying the termination as fair is squarely on the employer under Section 43, 45 and 47(5) of the said Act. The employer must therefore prove that there existed a valid and fair reason related to the employees conduct, capacity, compatibility or operational requirements of the employer and must

prove that he followed a fair procedure or what is now called due process in dismissing the employee.

30. The claimant contends that she was unfairly dismissed because she did nothing wrong to warrant dismissal and that the procedure followed in dismissing her was not in compliance with the law and the KPA disciplinary Handbook 2008. She has denied the truth of the accusations and maintains that she was denied fair hearing on all charges. She contends that she was never heard by the internal auditors before preparing the Auditor's Report and she was never served with the audit report before appearing before the committee of inquiry. In addition she has contended that she was not served with any further charges in respect of the loss alleged in the audits report dated 17/1/2011 which was done after her interdiction. She has further maintained that the losses if any were caused by her seniors and the weak KWATO system.

31. The defence has on the other hand maintained that CW1 as the incharge of Export Documentation failed in her duty of supervising her juniors in the department to ensure that proper documentation was used in exporting containers. The defence demonstrated through documents retrieved from the export department, the KWATO system and the HR department that improper documentation was used to ship out cargo without payment of the necessary charges which was estimated at ksh.16.3 million. RW1 demonstrated in his testimony that CW1's KWATO system user Identity number 90080 was used in several fraudulent transaction in which already used genuine pre-advises were reused through manipulation of the KWATO system. One example of such fraudulent use of old pre-advises was the changing of the information on pre-advise number 1161108x1013 on 6/7/2009 by the claimant. The pre-advise had been genuinely lodged on 16/11/2008 by Kenfreight EA Ltd but details therein were changed including the container numbers, the payment type from C (ledger client) to M (Cash client), the payer code was changed from 273 (Kenfreight E.A Ltd) to 555 (Babukher). Another example is pre-advise number 1091208x1011 which was genuinely lodged by Kenfreight E A Ltd on 9/12/2008 but its details were changed including the vessel schedule MSNA/2008/1533(0811124) to 7CZ/2009/0853(0906061), payment type from C to M, payer and forwarder from 1007 to 555, container number from TRIU8154031 to MSKU3599557, container size from 40 to 22, vessel schedule again changed from 7CZ/2009/0833(0906061) and shipped out on 7/7/2009. The above manipulation according to the Rw1 were done by CW1 whose KWATO user ID 90080 was used for effecting the fraudulent changes in the old pre-advise.

32. Although the claimant attempted to deny any wrongdoing the court finds on a balance of probability that the employer had proved valid and fair reason upon which CW1 was dismissed. She participated in fraudulent transactions which led to loss of revenue to the employer. Even if the KWATO system, was vulnerable to abuse by many users and had in deed led to loss even in the imports department, that in itself does not absorb CW1 from the specific wrongs she did. She may not however bear the blame for the wide range of system manipulation during the other shifts where she was not on duty after 3pm. Consequently the employer must bear the blame for failing to mitigate loss by remedying the weaknesses in the KWATO system and also by failing to employ enough staff to supervise the 3 shifts in the Export documentation docket.

33. As regards procedural fairness, the court is satisfied that the claimant was served with charges in advance and therefore accorded a chance to prepare and make her defence both in writing and orally. It must be appreciated that although she chose not to request for her right to personal hearing, the employer never the less constituted the inquiry committee and invited the claimant to defend herself on the charges she was facing. Although she raised issue with the additional charges which had not been included in the show cause letter, the court is satisfied that she suffered no prejudice nor did she unsuccessfully seek any adjournment. The court has also considered the composition of the committee of the inquiry and found that the same was in accordance with the KPA's Disciplinary Handbook.

34. Having carefully considered all the evidence on record and the law, the court finds on a balance of probability that the dismissal of the claimant was fair both substantially and procedurally. The defence has discharged her burden of proving that there existed a valid and fair reason for dismissing the claimant on 5/10/2011 and that she followed a fair procedure in dismissing the claimant as provided under Section 41 of the employment Act and Section K8 of the KPA Disciplinary Handbook. Section 41

of the Act provides that before an employer dismisses an employee for misconduct, poor performance and incapacity, he shall explain to the employee in the presence of another employee of the accused employee's choice, the reason for which he intends to dismiss the employee and thereafter accord the accused employee a chance to defend himself before the decision to dismiss him is reached. This is what has become known as disciplinary hearing or due process and the court is satisfied that the same was done in this case.

RELIEFS

35. In view of the findings above the court declines to declare that the claimants dismissal from employment was unfair and wrongful. Consequently the prayer for reinstatement to work or in the alternative salary in lieu of notice and compensation for unfair and wrongful termination is dismissed. Likewise the prayer for salary for the period after 5/10/2011 till the date of reinstatement is also dismissed for the reason that no reinstatement is ordered.

36. The claimant is however awarded salary for 5 days worked in October as prayed being ksh.9167 and not denied. The claimant will also get Ksh.805,534.82 being arrears of her half salary withheld during her interdiction period of 11 months. The court is of a considered view that it has not been given clear evidence to warrant the said forfeiture or any other benefit of the salary to KPA as a surcharge. The Courts observation is that the defence did not prove the specific amount of money that was lost by CW1 acting alone. As agreed by the witnesses on both sides, there was massive manipulation of the KWATO system by a number of KWATOS users. As already found above, the employer was also to blame for failing to ensure that KWATO system operated without problems. She also failed to employ adequate staff to ensure that there were supervisors for every shift in the Export Documentation. It would therefore be unfair to order the claimant alone to pay the whole price of losing her job plus her accrued benefits, while the rest of the fraudsters and the indolent employer goes scot free. The claimant will also get pay in lieu of 45 leave days that were never utilised and which was consented to by the defence as amounting to Ksh.170,630. The court awards the ksh.170,630 consented to by the defence because

the claimant did not provide any evidence to warrant assessment of the leave days based on her gross pay.

DISPOSITION

37. For the reasons stated above judgment is entered for the claimant in the sum of Ksh.985,331.82 plus interest from 5/10/2011 till payment in full. The claimant will also have costs of the suit plus interest.

Orders accordingly.

Dated, signed and delivered this 27th February 2015.

O. N. Makau

Judge