



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1109 OF 2011**

**BANKING INSURANCE & FINANCE UNION (KENYA) ..... CLAIMANT**

**VERSUS**

**UKULIMA SACCO SOCIETY LTD ..... RESPONDENT**

**JUDGEMENT**

**Mr Isaiah Munoru instructed by BIFU for the Claimant**

**Mr Molenje instructed by FKE for the Respondent**

1. Issue in dispute in this case is the unfair termination of Meshack O Ambuso, the grievant, in a suit filed by his union Banking Insurance and Finance Union (Kenya) (BIFU) against the respondent, Ukulima Sacco Society Ltd.

2. The claim was filed on 13<sup>th</sup> July 2011 by BIFU and the defence filed on 19<sup>th</sup> September 2011. In evidence, the grievant testified in support of the claim and the Respondent called Richard Nyaanga Ongeri. At the close of the hearing both parties filed their written submissions on 9<sup>th</sup> January 2015 and 28<sup>th</sup> January 2015 for the Claimant and Respondent respectively.

3. The matter was partly heard by Makau, J and upon his transfer outside Nairobi, on 28<sup>th</sup> May 2014, both parties agreed to proceed with the hearing from where the matter had ended before the presiding Judge. On that basis, the claimant's case proceeded before Makau, J and the Judge herein heard the defence.

**Claimant's case**

4. The grievant Meshack Ambuso was employed by the Respondent as a Clerical officer on 18<sup>th</sup> May 1995 on a salary of Kshs.2, 765.00. he was confirmed on 29<sup>th</sup> December 1995 band worked in various sections especially members personal account section where ledger cards are maintained together with all shares, loans repayments and interests on loans. His last salary was Kshs.19, 917.00. on 31<sup>st</sup> December 2004 the grievant was suspended for 7 days and asked to show cause why disciplinary action should not be taken against him due to gross misconduct that from August and November 2004 he conspired to defraud certain Kenya Sugar Board members of their loan repayments and also failed to present to the data section these members Personal Account cards on time for the recovery and hence causing the Respondent loss of income.

5. On 4<sup>th</sup> January 2005 the grievant responded to the allegations against him noting that his role was to process loans by attaching the updated Members Personal Account cards and that loan cheques are

forwarded to data section in a file for recovery before cheques are dispatched. The suspension was extended by 21 days citing incomplete investigations but on 10<sup>th</sup> February 2005 the grievant was terminated on the grounds that he assisted some members to falsify documents to unfairly and unprocedurally obtain loans and cashed their loan cheques. The grievant appealed against his termination on 16<sup>th</sup> June 2005 which was dismissed.

6. The Claimant reported the dispute to the Minister on 15<sup>th</sup> December 2005 and a conciliator was appointed but his report had findings and recommendations that were conflicting and confusing and thus the challenge and the claim herein.

7. The Claimant also stated that the grievant was not involved in any conspiracy within the Respondent business as loans processing is done procedurally. The general manager does authorise all completed loan forms upon verification that all the supporting documents which is then sent to the registry where the authorised loan form is registered and given a loan m=number, a serial number and stamped then forwarded to Members Personal Account. At the Members Personal Account section, all ledger cards are attached, updated and the supervisor does verify all entries are complete and then forward to loans office. At the loans office, a loans officer does appraise the application for approval upon verification of all documents and then forwarded to cheque writing and data office for loan recovery. All data sheets to various members are prepared here, data sheets retained for follow up on all loans and then returned to cheque writing for the second time for the general manager signature and then dispatch. The branch official for the member collects the cheque and any abnormality with the cheque upon collection entirely lies with the recipient. Where a cheque is reported lost, the Respondent can address the issue of stoppage in payment.

8. The Claimant also stated that the termination of the grievant was unfair as he was never issued with any warnings before his termination, he was not heard on allegations against him and no staff committee was constituted to hear his case after suspension. There was thus no proof that the grievant assisted members to falsify the supporting documents so as to obtain loans where there existed various levels of checks and balances in a loan application process; any investigations conducted did not involve the grievant nor was he ever called to ascertain the issues raised in any investigation at a hearing. The allegation that the grievant's cashed member's cheques is a criminal offence but was never followed. The grievant was denied authority by the general manager to clear his loan an indication that there was bad blood between them.

9. The claim is for reinstatement of the grievant or payment of compensation.

10. In evidence the grievant testified that since his termination by the Respondent he has been running a taxi at Ongata Rongai. He was employed by the Respondent on 18<sup>th</sup> May 1995 but on 31<sup>st</sup> December 2004 he was suspended for 7 days on the grounds that he committed fraud against members of the respondent. He denied the allegations. He was told of complaints with fraud allegations but he never met them. The suspension was extended with 21 days on the grounds that investigations were ongoing; he was never called to any hearing. On 10<sup>th</sup> February 2005 new grounds were issued noting that the grievant had assisted some members to falsify documents to unprocedurally obtain loans and that he cashed their cheques. He was however never shown the cheques he was accused of cashing or shown the documents he was alleged to have falsified. He was dismissed and he lodged an appeal which was also dismissed. The union reported a dispute to the minister but the conciliator's report was not satisfactory.

11. The grievant also testified that he was not paid his terminal benefits except pension. He is seeking reinstatement back to his position without loss of any benefits and in the alternative, compensation at 12 months' salary together with interest and costs.

12. In cross-examination, the grievant confirmed that he had been on suspension in 2004 which was lifted, there was no disciplinary hearing. There was an audit report but he was never asked to respond to it but he responded to the suspension letter. On 11<sup>th</sup> February 2005 he was at the general manager's office alone where he was issued with a letter of dismissal. He studied at Netvine College which is long Jogoo

Road; he knows Annastina Maithya who works with Kenya Sugar Board as he assisted her severally in Members Personal Account where member's deductions are posted in a card. His duty here was to update cards and file them and thus the grievant did not assist Annastina to get a loan. He did not refuse to face the disciplinary process initiated by the employer as none was done and in any case he was never invited to any such hearing. He was aware of investigations being done by the respondent, and from his reading of it, the report issued has correct views but the findings are wrong. The grievant is thus seeking to be reinstated back into service without any loss of benefits and be compensated for the period out of work.

### **Respondent's case**

13. In defence, the Respondent stated that they received complaints from the Kenya Sugar Board that some of their respondent's employees were mishandling their loan repayments and deductions and from these complaints the Respondent initiated independent audit to investigate these complaints. The audit report revealed 4 cases which the grievant had been handling and had been fraudulently been manipulated to obtain money from members by alternating their loan application documents and offering false pro forma invoices for a college with a view to having the Respondent issue college fees cheques ostensibly to this college. The grievant would then en-cash the cheques and deduct a commission and surrender the balance in cash to the involved members. The affected accounts included;

**Cheque No. 219305 for Kshs.30, 000.00** for Bernard Muli where the cheque was issue on 28<sup>th</sup> June 2005 in favour of Netvine Computer Systems as per school fees structure attached to the loan form. Bernard Muli stated that two weeks after his application, the grievant called him to collect his loan cheque but at the grieving's office he was issued with Kshs.26, 000.00 in cash instead of cheque and was promised the balance of kshs.4, 000.00 would be released later. Two days later he was given his balance but noted that his application for loan was for purposes of buying a piece of land and the attached fees schedule did not belong to him as he had no child studying at Netvile Computer Systems.

**Cheque No. 214766 for Kshs.125, 000.00** for Anestina Maithya which was issued on 19<sup>th</sup> March 2004. The applicant was Anestina Maithya who applied for a loan in March 2004 and was advised by the grievant to apply for a school fees for it to be processed within the shortest time, she was issued with a fees structure from Netvine Computer Systems. When the cheque was ready, she went to the grievant who helped her to encash it and was given Kshs.80, 000.00 and advised that the balance of Kshs.32, 500.00 would be released in 3 months' time and that kshs.12, 500.00 would be retained as commission for the grievant. The balance of Kshs.32, 500.00 has never been paid to her.

**Cheque No. 221004 for Kshs.45, 000.00** for Christine I Khavaya which was issued on 24<sup>th</sup> August 2004 in respect of a loan approved to her as member No. KSA 293 who had applied for kshs.45, 000.00 for school fees for her distance learning at Kenya School of Professional Studies. She was paid cash at kshs.40, 500.00 which was less kshs.4, 500.00 of the total she had applied for only to realise from her pay slip that she was being deducted a loan of kshs.45, 000.00 yet she had received less. Upon inquiry, the grievant explained that Kshs.4, 500.00 was commission charges for encashing the cheque and he had attached a fees structure for Netvine Computer System to her loan application form and the loan cheque was in favour of Netvine Computer Systems for schools fees yet as the applicant she had not given such an attachment and had no child studying at such a place.

14. The Respondent also stated that the audit done revealed that the loan processing procedures put in place was not followed. The policy is that each applicant is served on a first come first served basis unless it is an emergency and in such a case it must be supported with documents; the branch officials verify the guarantors and the application is sent to the general manager who must verify all documents are in order; the registry must receive the file with the application for, for updates of the members' ledger cards to confirm shares and any outstanding loan; loans section updates the file, tabulates eligibility and amount qualifying for a loan and hands over the file to credit committee for approval and then the data section must post the approved amounts on the data sheets for employer's recovery with monthly repayments. On

this procedures being followed, the signatories of the cheque must verify and then send the cheque for dispatch which must be physically collected by the member or the branch official authorised by such a member. In this case, the grievant did not follow these procedures.

15. On the basis that procedures were not followed, the grievant was suspended pending investigations which revealed that loan ledger cards allocated to the grievant had not been updated for over 4 months at the time of handing over. Some cards had non-performing loans which the grievant failed to report for recovery denying the Respondent income. The investigations also revealed that the grievant did not update the loan ledger card for Ms Anestina Maithya and failed to report to his immediate supervisor. The loan was approved in March for Kshs.125, 000.00 and as at 10<sup>th</sup> November 2004 it had not been received. The period of suspension was extended to 28<sup>th</sup> January 2005 and later a show cause was issued, he was issued to a copy of the audit report and his union [the claimant] informed, but there was no satisfactory response or explanation for the actions taken and thus the grievant was terminated from his employment. upon receipt of the termination letter the grievant became violent and armed with a sword attacked the general manager but the security officers intervened, which was reported and a statement written. The union and the respondents held a meeting but there was no resolution and hence a dispute was filed with the minister but the issue was not settled.

16. The Respondent also stated that this is a case where the grievant knowingly and intentionally defrauded the Respondent by providing members with false document as well as processing cheques in the name of a dubious college yet he was employed to guard against such practices. The grievant failed to upgrade loan application card for over 4 months and consequently non-performing loans could not be recovered denying the Respondent income. There was breach of procedure where the grievant failed to pay members vide cheques and instead paid in cash. The grievant was heard by the Central Management Committee through delegated Staff Matters Sub-Committee and on a finding of gross misconduct, a summary dismissal was warranted. Despite the gross misconduct, the grievant actions were treated as normal termination and hence were paid his terminal dues and the applicable Collective Bargaining Agreement was not violated. Any claims of malice and bad faith are misconceived and should be dismissed.

17. In evidence, the Respondent called Richard Nyaango Onger, the Deputy Chief Executive Officer (CEO). He stated that he has been with the Respondent for over 17 years and in 2004 he was the Internal Audit manager and hence conversant with the case. His duties in 2004 included audit and review of internal controls, loan and finance recovery from members of the Respondent and thus worked with the grievant who was a clerk whose duties and responsibilities were that he was in charge of members personal accounts especially those from Kenya Sugar Board, updating loan repayments, share contributions, interests and benevolent funds, among other duties in the Members Personal Accounts (MPA) section.

18. The witness also stated that the grievant was not diligent in his duties as members from Kenya Sugar Board complained that loan disbursements from the Sacco had anomalies noting their pay slips. When they asked the grievant he explained that if they wanted their loans early or processed faster they needed to attach additional evidence to assist them get the loans. The grievant gave one such member a school fees structure to attach to a loan form to get the loan faster. The normal practice was that when the Respondent got such an application and the loan was approved, a cheque would be paid to the member but in this case cash was paid less what had been applied for. The grievant assisted them by getting a fee structure from Netvine Computer College and he took the cheques there which were cleared and the applicant members received the cash. This meant that the Netvine College was in existence as the cheques went through. The Respondent investigated the college and found that it was selling computer parts and did training for industrial attachment. This was fraud for the grievant to circumvent procedures for his own gain.

19. The witness also stated that one Mr Bernard Muli from Kenya Sugar Board complained as well as Anastina Maithya and Christine Kavaya. In this case the grievant did not follow the respondents' laid down procedures in loan application process which required updates on member contributions, guarantors and several documents to be attached in support. To qualify for a loan each account holder must be up to

date. In this case, the grievant expedited the process of the loan by giving each applicant a fees structure and once the loan was given, not all the money was paid out and it was paid in cash less what was called a 'commission' which was contrary to the required regulations as this was fraud.

20. The witness also stated that he conducted investigations and the outcome report was shared with the grievant. A disciplinary action was taken against him as this was a serious case of fraud and warranted a suspension; a show cause was issued and later the grievant was dismissed for gross misconduct. The grievant was given a chance to reply to all the allegations in writing and the central committees found the reply not satisfactory; he failed to adequately respond to the serious issues raised and due to the nature of evidence that existed against him, the Respondent summarily dismissed him. The Respondent was humane and the summary dismissal was reduced to a normal termination so that the grievant could get his dues.

21. Once the grievant was dismissed, the union lodged a complaint with the respondent, the matter was reported to the minister and a conciliator was appointed but the parties could not agree.

22. On cross-examination, the witness confirmed that all the cheques issued by the grievant to the members from the Kenya Sugar Board to Netvine Computer Systems were cleared and there was no evidence to link the grievant to this entity. There is no evidence from those aggrieved by what the grievant is alleged to have done. The investigations report was not shared or filed in Court and there is no evidence that the grievant received it. There is equally no evidence that the cheques issued to the various complainants were collected by the grievant. In the members personal account department, not all files were updated and this did not only affect the files of Christine, Anestina and Bernard Muli but the complaints raised against the grievant by several members caused the Respondent to take action and investigations and found the fraud committed by him hence his dismissal.

23. The witness also admitted that the reasons given for suspension are different from those forming reasons for dismissal. The suspension was based on the reason that the grievant had committed fraud while the dismissal was based on the reasons that the grievant had falsified documents and cashing cheques for members.

## **Submissions**

24. In submissions the Claimant stated that the grievant was placed on suspension and later terminated for different reasons. When the grievant was placed on suspension, he gave his defence to the issues raised but even before these could be addressed he was terminated to reasons of falsifying documents and cashing member cheques which was different from the reason for his suspension being that he was alleged to have conspired to defraud members of their loan repayments; failed to present data section with members' Personal Account cards on time and thus the Respondent lost income. In issuing both notices for suspension and termination, the applicable Collective Bargaining Agreement sections were never cited to enable the grievant to effectively respond. The Respondent also failed to prove how they arrived at the evidence used against the grievant as the investigation report was never submitted or the affected members called in his presence to give evidence.

25. The Claimant also submitted that there was no falsification of documents as there is evidence Netvine Computer Systems exists and cheques were written in their names and were cashed. That there is no evidence to controvert these facts and the alleged alteration of application forms so as to add new fees structure was evidence not presented to the grievant or to the Court to assess its veracity. For a person to cash a cheque that does not belong to them is a criminal offence which was not the case here. The alleged fraud was never reported to the relevant authority and the member alleged to have been defrauded off their cash have no statements or evidence in support.

26. The Claimant also submitted that the staff matters sub-committee was never constituted to hear the grievant's case. Such deliberations were never documented and the grievant was never called to give his defence. There was no hearing. The applicable Collective Bargaining Agreement and the Employment Act were never complied with and the outcome decision to terminate was unprocedural, based on malice and an illegality. This is therefore a right case for reinstatement and compensation as held in **Cause No.**

## **31 of 1998, BIFU versus Standard Chartered Bank of Kenya Ltd.**

27. The respondents submitted that in October 2004, the Respondent received various complaints from members especially those from Kenya Sugar Board on the mishandling of their loan applications, approval, issue of cheques and repayments. Upon investigations and an audit in the Members Personal Accounts section it emerged that the grievant neglected his duties by undertaking fraudulent activities. The investigations revealed a syndicate involving officials, staff and other institutions which had promoted additional documents, encashment of members' cheques. The grievant was suspended and during investigations it revealed that loan ledger cards allocated to him had not been updated for 4 months and some cards had non-performing loans which had not been reported for recovery and thus the Respondent was denied income. The suspension was thus extended and the grievant was fully informed. Upon completion of investigations, the grievant was issued with the audit report in the presence of the shop steward and was invited for a disciplinary hearing for 9<sup>th</sup> February 2005. The committee after deliberations of the matter recommended dismissal of the grievant. The Respondent followed these recommendations and the grievant was terminated and paid his terminal dues. His appeal against termination failed as it did not raise any new issues that had not been considered.

28. The respondents also submitted that when the grievant was issued with his letter of termination he became violent and while armed with a sword attacked the General Manager in his office. The security staff had to intervene.

29. The respondents also submitted that the termination was justified as the grievant failed and neglected to do his duties by being involved in fraudulent activities, falsifying documents and failing to keep proper records where the Respondent lost income. These actions warranted summary action of dismissal under the Collective Bargaining Agreement and applicable law.

30. The respondents also submitted That the grievant was heard before his termination. Upon suspension on 31<sup>st</sup> December 2004 the grievant was given reasons for the same where he gave his response but failed to exonerate himself. Upon investigations more details about the grievant's misconduct emerged and the suspension was extended and communicated to the grievant. The responsible committee sat and upon deliberations and consideration of the grievant written submissions found that he should be summarily dismissed but the Respondent considered the case in a humane manner and terminated his service and paid terminal dues. This was despite the fact that the grievant had a poor work record and had been issued with a record of warning letters. These warning letters relate to being absent from his workplace in 1996; in December 1997 for attempted fraud and in March 1998 for roaming in the offices during work hours, April 1998 from an impromptu inspection the grievant was found with members loan forms not registered; July 1998 following an impromptu inspection he was found with members personal accounts cards allocated to him not opened as posted and had 55 files not worked on; in September 2000 a caution was issued for not concentrating on his work; April 2002 warned for being perpetually late and loitering during work hours; April 2003 warned with regard to insubordination; June 2003 warned for unsatisfactory work performance; August 2003 the grievant forged the General Manager's letter to grant him authority to clear and obtain a loan and as a result he was interdicted; and November 2003 interdiction was lifted and final warning letter issued.

31. The Respondent thus submitted that based on the poor work record of the grievant, the misconduct that arose with regard to the eventual termination had destroyed the work relationship and could not allow the grievant to continue work with them. Terminal dues were paid upon termination which included pay for 77 days on leave earned, a months' notice pay and overtime pay. The grievant has however refused to collect the dues which the Respondent has been willing to pay vide cheque No. 242619. In this case, a reinstatement does not arise as there were valid reasons that lead to the grievant's termination of employment.

### **Determination**

32. The parties herein have a Collective Bargaining Agreement for years 2004 and 2005 governing their relationship as at the time subject of this suit. The basis of the claim herein is the unfair termination of the

grievant on 10<sup>th</sup> February 2005. The applicable law in the suit based on the facts and nature of claim is therefore the Employment Act, Cap 226 Laws of Kenya, now repealed.

33. The concept of 'unfair termination' or the issue as to whether a termination is 'fair' or 'unfair' are matters now addressed under the Employment Act, 2007 unlike what is applicable under reasons for termination in the repealed Employment Act, Cap 226. From the onset I therefore find no justification on the claim for 'unfair termination' of the grievant as to so claim with regard to the nature of the claim and the facts forming such claim is a matter governed by law and this concept of 'unfair termination' is not a right outlined under the repealed law. It cannot thus arise in any claim that arose before the effective date that operationalised the rights covered by the Employment Act, 2007.

34. However, even where 'unfair termination' is not applicable in this case, the parties governing Collective Bargaining Agreement and the law applicable addressed the issue of termination. Under the Collective Bargaining Agreement termination of employment was allowed upon giving one month's notice or pay in lieu. It was also provided that an employee who committed a serious offence was to be suspended from employment pending investigations and upon trial where found innocent, such an employee is to be reinstated and where found guilty, and such an employee is to be dismissed from the date of interdiction.

35. In this case, the Respondent submitted that the committee addressing the grievant's case deliberated over the case and arrived at a decision that the grievant should be dismissed. However, for humane reasons, the Respondent made a decision to make it a normal termination so as to pay the grievant his terminal dues. However, this change of mind and finding was not addressed in the letter of termination of service. From the applicable law and Collective Bargaining Agreement, this effectively became a termination and not summary dismissal. Thus the procedure applied in arriving at this termination under the applicable law and Collective Bargaining Agreement becomes relevant.

36. Under the Collective Bargaining Agreement clause 8 and 9 regulate termination and suspensions. Where an employee is placed on suspension, investigations must be conducted and based on the findings, the subject employee must be put on trial. A trial in trial proceedings is a process. Such processes envisage the subject of any accusation being called to listen to his charges and giving his defence. These are the basic tenets of natural justice that ring true in any legal proceedings that in their nature may result in a sanction. A chance to be heard and give a defence. A change to hear the charges and give an answer in reply. This is an issue that both parties herein had foreseen and agreed upon in the Collective Bargaining Agreement. This is not far-fetched as upon this agreement even with the application of law, Employment Act, Cap 226 [now repealed], the parties had envisaged a trial once investigations were completed and before a termination.

37. Where the applicable Collective Bargaining Agreement was to be followed, the complaints against the grievant should have been addressed. These were serious allegations against him that warranted him to be given a change to be heard and for this right to be heard to be effectively enjoyed; the grievant should have been issued with the investigations report and the audit report that had details with regard to the alleged fraudulent activities and neglect of his duties. To use and apply these reports against him without giving the details amounts an unfair trial process based on the applicable Collective Bargaining Agreement provisions and the law. The respondents submitted that the grievant was issued with these reports but I have presumed the entire record and exchange of letters but do not find any that forward this reports to the grievant or to his union. during the hearing and submissions, these reports were never submitted raising doubts as to their existence and application against the grievant. Even in a case where the investigations and audit reports were given to the grievant, the offences he was alleged to have committed, that of fraud, falsification of documents and neglect of duty as an employee of the respondents, these were offences serious enough to warrant summary action or summary dismissal in law and under the Collective Bargaining Agreement. The option taken to convert the same to a termination, even on the application of humanitarian grounds, where such serious offences are committed by an employee and the respondents lost income, I find such serious enough to justify a summary action. Since this was not the case, a termination should have then been treated as such, and the grievant ought to have been taken through trial.

38. The offences of fraud and falsification of documents in any transaction, by any person including an employee is criminal behaviour. Where the grievant was found by an audit report or an investigations report to have committed fraud and falsified documents to achieve any end, such criminal acts even where the grievant was terminated, these ought to have been reported to the police for proper criminal investigations. The action taken against the grievant, even where he was not issued with audit report or the internal investigations reports, a criminal charge should have been levelled against him. This was not done and the Respondent does not plead or give evidence to this effect. It is noteworthy that the Respondent submitted that the grievant, upon being served with his letter of termination, he armed himself with a sword and attacked the General Manager. He was saved by the security personnel. Such acts are serious and not justified under any circumstances. There is no reason or there is no reasons advance by the Respondent as to why no action was taken in this regard. Whatever the case, such evidence lacking and the respondents having failed to accord the grievant a trial as agreed upon between them and the claimant, the outcome decision to terminate the grievant was wrong.

## **Conclusion**

39. The Claimant is seeking the reinstatement of the grievant together with compensation for 12 months. On the finding that this is a claim falling under the provisions of Employment Act, Cap 226, now repealed, the claim for compensation of up to 12 months lacks merit as there is no legal basis for the same. This claim was filed on 13<sup>th</sup> July 2011 at the nick of time just before the same expired in terms of its limitation period. A reinstatement, where envisaged by a Claimant for the benefit of a grievant must be sought as soon as reasonably practicable and not seat back and wait until the 11<sup>th</sup> hour to place such a claim is not only of great incontinence to the employer, as such an order to be granted, the time lapsed must be looked at and the possibilities of the same job being available considered. To grant a reinstatement after a record 10 years since the grievant was terminated would be to fail to acknowledge work and labour relations dynamics that have emerged since. A specific claim of reinstatement is not similar as seeking re-engagement. The narrow options given to the Court in terms of the orders sought are not tenable. Equally, the Claimant has not contested the poor work relations the grievant had which heavily dents his claim for reinstatement. Such a poor record spanning over several years must be taken into account here. A reinstatement shall therefore not be granted.

40. On the finding that the termination was wrong and hence the contract of employment for the grievant breached, the Court will award the Claimant one (1) months' salary in compensation. The termination was already effected with payment of all the terminal dues owed to the grievant being one (1) month's salary, his leave dues, overtime and other work benefits that arose as at the date of his termination. Based on the pay slip of the grievant as at the time of his termination, he earned Kshs.19, 917.00 as his gross salary. This shall be the figure applied in the computation of his dues.

**Judgement is therefore entered for the Claimant against the respondents in the following terms;**

- a) For the wrong termination of the grievant, the Claimant is awarded one month's salary compensation at kshs.19,917.00;**
- b) Terminal dues owing and arising out of termination as at February 2005 - one (1) month's salary, leave dues, overtime and other work benefits that arose as at the date of termination shall be computed and paid within 14 days;**
- c) The Claimant is awarded 50% costs herein.**

**Delivered in open Court dated and signed in Nairobi on this 19<sup>th</sup> day of May 2015.**

**M. MBARU**

**JUDGE**

**In the presence of**

**Lilian Njenga: Court Assistant**

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