



REPUBLIC OF KENYA
 IN THE INDUSTRIAL COURT AT NAIROBI
 CAUSE NUMBER 927 OF 2010

BETWEEN

P O CLAIMANT

VERSUS

The Board Of Trustees, A F

B L H 1ST RESPONDENT

R J K C 2ND RESPONDENT

Rika J

CC. Mr. Kidemi

Ms. Makori instructed by Kelvin Makori Advocates for the Claimant

Mr. Wangila instructed by A.S. Kuloba & Wangila Advocates for the Respondent

ISSUE IN DISPUTE: GENDER BASED VIOLENCE AT THE WORKPLACE

AWARD

1. P O filed her Statement of Claim on 17th August 2010. The 1st Respondent did not file an Appearance or Statement of Response. The 2nd Respondent filed his Statement of Response on 12th October 2010. P testified, and closed her case on 14th June 2013. The 1st Respondent, who is said to be a foreign national and resident outside Kenya, did not give oral testimony but filed an affidavit sworn on 9th July 2013. The Parties subsequently filed their Final Arguments and scheduled the dispute for 14th January 2014, when they would highlight the Submissions. Ms. Makori attended Court on the day, and made her highlights, while the Respondent’s Advocates did not attend Court.

2. The Claimant states that the 1st Respondent is the Board to a Fair Trade Charitable Organization, dedicated to the eradication of poverty. The 2nd Respondent is the Executive Chairman/Manager of the Organization. The Claimant was employed by the 1st Respondent through the 2nd Respondent as a

Training and Investigative Consultant in Kenya, for a period of 2 years commencing 5th January 2010 at a salary of Kshs. 120,000 per month. The contract of employment was signed between the Claimant and the 2nd Respondent. The 2nd Respondent interviewed the Claimant, and told her he was the Director of the 1st Respondent. Her work was to travel around and talk to Women Farmers.

3. The 2nd Respondent terminated the Claimant's contract on or around 23rd May 2010. In this month the Claimant and the 2nd Respondent left for Swaziland through South Africa, to attend a Regional Conference organized by the Confederation for Fair Trade in Africa [COFTA]. The Conference was to take place between 23rd and 28th May 2010.

4. P and J stopped over at Cape Town. The 2nd Respondent explained to the Claimant that he wished them to see some seedlings at Cape Town, which could be sold in Kenya. While there, he started to make sexual innuendos, telling the Claimant that he found her attractive. She did not respond to him. The following day, he hired a small car and the Pair left at 6.00 a.m. for a journey that ended at 8.00 p.m. In the course of the journey, J got very angry with P, saying he had spent a lot of money on her. He questioned why she had rebuffed his proposal for a romantic lunch. He clenched his fists and started hitting P.

5. At the end of the journey, he told her he had booked for her a room. She thought it was her own room and he had his own separate room. It was not the case; J had booked a room for the two of them. She protested. He left and returned at night. She slept on the floor and left the bed for him. P sent a message to her Brother reporting the assault. Two days later, she received an e-ticket from the Travel Agency, and returned to Kenya. J went on to attend the Conference.

6. When she came back, she reported to her workplace at Runda in Nairobi. J returned after the Conference and immediately sent threatening e-mail messages to the Claimant. Her contract was then terminated through an e-mail communication from the 2nd Respondent. The reason for termination was said to be the Claimant's alleged misconduct in South Africa. She was not paid her salary for the month of May 2010. She wrote a letter of demand through her Lawyers, seeking damages, notice and unpaid salary from the Respondents. There was no reply. She filed this Claim seeking the following Orders:-

- a. The Respondents to pay to the Claimant her salary for the May 2010 at Kshs. 240,000;
- b. N.S.S.F and N.H.I .F and other statutory deductions;
- c. Damages for breach, wrongful termination, pain and injury;
- d. Exemplary damages; and
- e. Any other relief the Court may deem fit to grant.

7. Cross-examined, she testified she was employed on 5th January 2010. The contract was between her and the 1st Respondent, but signed between her and J. He signed on behalf of the 1st Respondent. The 2nd Respondent's name did not appear in the Claimant's pay slips; instead, the pay slips were in the name of Farmers Own. In paragraph 3 of the Statement of Claim, the Claimant states J was the Manager/Executive Chairman of the 1st Respondent. She never found out who were the other Officers of the 1st Respondent. She understood the contract which she signed. J employed her, and she expected him to pay her. Redirected she emphasized it was Jim who terminated her contract of employment. It was not done on the letterhead of the 1st Respondent. J told her he was the Director, and paid her salary. He gave her instructions in the conduct of her work. She prays the Court to uphold her Claim.

8. The 2nd Respondent denied that he is the Executive Chairman or Manager of the 1st Respondent. He does not concede to having employed the Claimant at all. He did not sexually assault the Claimant, or terminate her contract of employment. He states that the Industrial Court of Kenya does not have the jurisdiction to hear the dispute. The e-mails attached to the Claim are irrelevant and do not emanate from the 2nd Respondent. Without prejudice to these statements, the 2nd Respondent holds that the Claimant was dismissed for an act of gross misconduct. She failed to travel as directed by the 2nd Respondent. If any allegations by the Claimant occurred, they occurred within a purely social and private context, and

had no relationship with the contract of employment. The wrongs at any rate happened in the Republic of South Africa, and the Industrial Court of Kenya has no jurisdiction over a dispute which arose in South Africa.

9. In his affidavit sworn in Greece, on 9th July 2013 and received at the Industrial Court on 25th July 2013, J stated he worked as a Volunteer for the 1st Respondent. The Claimant was an acquaintance of his, employed by the 1st Respondent. He did not personally engage her as his Employee. His inclusion in the proceedings is malicious. All payments to her were made by the 1st Respondent. The allegation about sexual assault are personal, and not of an employment nature, to be tried by the Industrial Court. Her allegations fall within the jurisdiction of the criminal Court sitting in South Africa. He prays for dismissal of the Claim.

10. The issues in this dispute may be stated as follows:-

- a. **Whether the Industrial Court of Kenya has jurisdiction in this dispute;**
- b. **Whether the 2nd Respondent employed the Claimant;**
- c. **Whether, if he was her Employer, terminated her contract of employment fairly and lawfully; and**
- d. **Is the Claimant entitled to the prayers sought?**

The Court Finds and Awards:-

11. The Parties agree the Claimant signed a contract of employment dated 5th January 2010. The contract was indicated to be between her, and the A for B H. The 2nd Respondent, J, signed the contract on behalf of the 1st Respondent.

12. The question of jurisdiction is made clear in clauses 16 and 17 of the contract. Clause 16 states the agreement shall be governed and construed in accordance with the law of Kenya. Clause 17 states that in event of dispute, the Parties to the agreement shall submit to the exclusive jurisdiction of the Kenyan Court.

13. The contract was concluded, and was to be performed in 'the territory' which means 'Kenya'. Termination occurred in Kenya. The Claimant is a Kenyan Citizen, and the 1st Respondent a Charitable Organization, domiciled in Kenya. The dispute is an employment matter, not a criminal matter. The Industrial Court of Kenya, not the Criminal Court of South Africa as preferred by the 2nd Respondent, has the legal mandate to hear and determine the issues raised in this Claim. Both the Employment Act 2007 and the Labour Institutions Act conferred the Industrial Court with exclusive jurisdiction to determine the specific issues in dispute in this matter. All the jurisdictional factors overwhelmingly point to the Industrial Court of Kenya, as the proper place of the trial. ***The jurisdictional challenge raised by the 2nd Respondent is rejected.***

14. Was the 2nd Respondent an 'Employer' of the Claimant? An 'Employer' in Sections 2 of the Employment Act 2007, the Labour Relations Act 2007, and the Industrial Court Act 2011 now in place, uniformly define an 'Employer' as '*any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes agent, foreman, manager or factor of such person, public body, firm, corporation or company.*' An 'Employee' is likewise uniformly defined as '*a person employed for wages or salary and includes an apprentice and an indentured learner.*'

15. The evidence of the Claimant, which was not contradicted, was that she was interviewed and employed by J. He signed the contract of employment for and on behalf of the 1st Respondent. He is described in that contract as the Executive Chairman. No other Officers of the 1st Respondent were introduced to the Claimant by J. The 2nd Respondent transacted business, could employ and dismiss an employee, on behalf of the 1st Respondent. The 1st Respondent remained faceless. Jim, in the view of this

Court was a factor, agent, manager, or foreman of the A for B L H. He acted for the Association, directing its business, and was an ‘Employer’ of the Claimant within the legal definition given above.

16. He would also be deemed an ‘Employer’ under other parameters. The 2nd Respondent had the right to control the work processes. The Claimant reported to him, and he directed her in the discharge of her role. The Claimant was to report to Jim in case of falling ill, or being otherwise incapacitated. She was accountable to him. Under the common law, he would be deemed to be her Employer. She was economically dependent on the two Respondents, for as long as the contract lasted. The 2nd Respondent paid her monthly salary from the 1st Respondent’s kitty. Adopting the common law test, the economic reality test, and even the hybrid test which focus on who has the right to control the manner of the Worker’s performance, the conclusion inevitably would be that J was the Claimant’s Employer. He recruited her, defined her work, directed her in the performance of her duty, paid her salary, and provided her with an Office at Runda, and accompanied her to South Africa for work-related Conference. ***The 2nd Respondent was properly brought to Court as an Employer of the Claimant.***

17. Was the Claimant’s contract terminated fairly and lawfully? There is conclusive evidence between 23rd and 28th March 2010, the Claimant was invited to attend Cooperation for Fair Trade [COFTA] Regional Conference 2010, held in Swaziland. She was accompanied by J K C.

18. At Cape Town, J told the Claimant they stop-over. He wished to have a look at seedlings that could be useful to the Kenyan Husbandry. It was here that J told the Claimant she was attractive. He started uttering sexual words. She did not respond to him. The following day, the pair boarded a small car. In the car, J was mad with the Claimant, because she had refused to have a romantic lunch with him. He got very angry, saying he had spent a lot of money on the Claimant. He hit her with his fists.

19. When the two arrived at their destination for that night, J informed the Claimant he had booked a room. She thought he meant her own separate room. It was not the case; he had booked a room for the two of them. He left and returned to the room at night. The Claimant left the bed for him, and spent on the floor. She sent a message to her brother, reporting the violence she had endured from her Employer. Two days later, she received an e-ticket and flew back to Nairobi, while J crossed over to Swaziland for the COFTA Conference.

20. When he came back to Nairobi, he terminated the Claimant’s contract of employment. He alleges that termination was on account of the Claimant’s misconduct while in South Africa. This in the view of this Court is not a valid ground for termination under Section 43 and 45 of the Employment Act 2007.

21. In his e-mails to the Claimant after South Africa, Jim reveals himself for what he was in the relationship. The Court is convinced these e-mails were exchanged between J and the Claimant. He has not offered any evidence to dissuade the Court the e-mails did not pass between him and the Claimant, as recorded in the Statement of Claim. The same e-mail addresses ***[particulars withheld]*** and ***[particulars withheld]*** were variously in use, even in communication between J and other persons such as Travel Agent H I and between him and his Advocates on record. There is no doubt in the mind of the Court that the e-mails between him and the Claimant on record are authentic. The Court shall examine these e-mails here, so as to have a clear perspective on the factual foundation of this Claim.

22. On 4th June 2010 J K wrote to P:

“.... From the outset, I thought you special..... I told you I wanted a beautiful girl, with a sense of adventure, who wanted to travel. You are beautiful. It seems you did not really want to travel. I told you I wanted a sexy girl who would be able to make emotional investment and want to jump to bed with me.....you had the opportunity to lead me and make it all work..... yet we tried three times, and all ends in disaster- Malaysia, Whistling Thorns and Republic of South Africa... 3 times is enough times... I wanted someone who wanted to get up and about and do things....”

24. On 17th June 2010, J sounded angry and even intimidating, writing to the Claimant:

“ Now I suggest you be very careful, and do what is necessary to bring this matter to a safe and speedy conclusion. You have nothing to gain. You may think you have little to lose, but you can lose more than you think.”

Jim demanded the Claimant pays to him within 7 days, what he termed as her cost of repatriation from South Africa. He also demanded that the Claimant pays to him the sum of Kshs. 228,000, allegedly held by the Claimant for an education course. He concluded:

“ After 7 days, it will be assumed that there is the probability of fraudulent conversion or other form of criminal misappropriation of funds. Action in this context will be robust...”

25. The Claimant curtly responded on the same date:

“ See you in Court”

This was the last communication brought to the attention of this Court between the Claimant and the 2nd Respondent, before the Claim was filed two months later in August 2010.

25. The 2nd Respondent terminated the Claimant’s contract of employment as a punishment to the Claimant for failing to live up to his sexual expectation. He did not employ her because he needed her as an employee; he was looking for emotional investment. He wanted a beautiful girl with a sense of adventure, who wanted to do stuff. He wanted a girl he could travel with around the globe, and who was sexy, with the ability to make the emotional investment and as boldly stated in his e-mail, *want to jump to bed with me.* This state of the 2nd Claimant’s mind led him and the Claimant to South Africa. He alluded to other travels to Malaysia and Whistling Thorns. The incident in South Africa appears to have been one episode, in an unfolding and continuing case of gender based violence and sexual harassment at the workplace. The Claimant did not fulfill the 2nd Respondent’s expectation. Jim used an employment relationship, as a conduit for his romantic dreams. He used an important agricultural-based organization, as his search engine for a beautiful, sexy girl, ready to jump to bed with him. When the Claimant did not welcome the 2nd Respondent’s approach, he terminated her contract of employment barely 5 months after he had recruited her. He was violent to her in South Africa when she would not yield to his advances. She was subjected to inhuman treatment, violently beaten in a foreign country, and forced by the circumstances to spend a night on the floor. He called her stupid. He assaulted her physically and psychologically. J continued to threaten her even after termination, telling her she could lose more than she thought. Her employment was derailed because she opted not to sleep with J K.

26. The 2nd Respondent threatened the Claimant he would take robust action if she failed to pay him the costs of her repatriation from South Africa. He did not come to this Court when invited by the Claimant to do so. He has instead argued he is a foreign national, and has placed himself out of the jurisdiction of the Kenyan Courts. Even as this litigation was going on, he was at sea somewhere near Greece. He swore his affidavit in Greece. In a preliminary ruling on the validity of the Claim raised by the Advocate for the 2nd Respondent, this Court stated on 11th October 2012 that, **“It is important that the 2nd Respondent is joined to the proceedings, so that he can clear his name and in doing so, clear the corporate image of the 1st Respondent.”** As the record will show, the 2nd Respondent has not once appeared in Court, either to respond to the allegations made by the Claimant, or in pursuit of robust action against the Claimant as intimated on termination of her contract of employment.

27. There is no doubt in the mind of the Court, that the facts in this dispute reveal a very depressing case of gender-based violence at the workplace. The law abhors this vice that is growing in the world of work, and which has impacted adversely on the decent work agenda.

28. Section 6 of the Employment Act 2007 expressly outlaws the conduct that J K exhibited in relation to the Claimant. It outlaws all forms of sexual harassment at the workplace. It states:

“ An Employee is harassed if Employer of that Employee, or a Representative of that Employer or a

Co-worker-

- a. ***directly or indirectly requests that Employee for sexual intercourse, sexual contact, or any other form of sexual activity that contains an implied or express-***
 - i. ***promise of preferential treatment in employment; or***
 - ii. ***threat about the present or future employment status of the Employee;***
- b) ***uses language whether written or spoken of a sexual nature;***
- c) ***uses visual material of a sexual nature; or***
- d) ***shows physical behaviour of a sexual nature, which directly or indirectly subjects the***

Employee to behaviour that is unwelcome, or offensive to that Employee, and that by its nature has a detrimental effect on that employee's employment, job performance or job satisfaction."

29. The evidence of the Claimant convinces the Court J, at various stages of the employment relationship, particularly in South Africa, directly or indirectly demanded for sex from the Claimant. He let her know he had spent a lot of money on her, which was either an express or implied way of saying he was according her preferential treatment or *quid pro quo*. He not only threatened her on her employment status, but terminated her contract, and went on making demands and threats after termination. He subjected her to physical behaviour of a sexual nature by booking a single room for the two of them in South Africa. He not only physically beat her up, but presumably as a prelude to the beating, nudged her. He says in one of his emails '***okay sorry for the nudging.***' There was a manifestation of physical behaviour, of a sexual nature. The Claimant clearly did not welcome this behaviour. She rebuffed J 3 times, in Malaysia, Whistling Thorns and South Africa. The behaviour was offensive and unwelcome, and had profound effect on the Claimant's employment and job satisfaction. She was denied the opportunity of attending a crucial International Conference, and repatriated to Kenya. She was dismissed from employment, and continued to be threatened even after employment by the 2nd Respondent. The 2nd Respondent acted contrary Section 6 of the Employment Act 2007.

30. The International Labour Organization [ILO] in Working Paper 3/ 2011 titled '**Gender- Based Violence in the World of Work: Overview and Annotated Bibliography**' by Adrienne Cruz and Sabine Klinger characterizes Gender-based violence as '***the most prevalent human rights violation in the world. Of the varied ways in which sex discrimination manifest itself across the globe, such violence is exceptionally dehumanizing, pervasive and oppressive. No other form of sex discrimination violates so many fundamental human rights as articulated in the 1948 United Nations Universal Declaration of Human Rights. These include Article 1 [All Human beings are born free and equal in dignity and rights] ; Article 3 [Everyone has the right to life, liberty and Security of the Person] ; and Article 5 [No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment].***' The Authors state that gender-based violence reflects and reinforces inequalities between men and women. At least one in three women in the world, according to this Paper, is estimated to have been coerced into sex, physically beaten and/or otherwise abused in her lifetime. This form of violence not only causes pain and suffering, but also devastates families, undermines workplace productivity, diminishes national competitiveness and stalls development.

31. The 1993 UN Declaration on the Elimination of Violence against Women, defines violence against women as '***any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.***' The 2nd Respondent was way off the mark, when he characterized in his affidavit, the events in South Africa as '***personal in nature,***' and not open to the interrogation of the Industrial Court of Kenya. His conduct towards the Claimant, whether in his house in Nairobi or a hotel room in Cape Town, or at the Sea near Greece, would amount to Gender-Based Violence against an Employee.

32. Further guidance on what would amount to Gender-Based violence is available from the 1988 General Survey of the Committee of Experts of the ILO, conducted on the Application of ILO Convention 111 [Convention Concerning Discrimination in Respect of Employment and Occupation, 1958]. The Committee listed examples of sexual harassment that may supplement Section 6 of the Employment Act 2007 to include: ***insults, remarks, insinuations and inappropriate comments on a person's dress, physique, age or family situation, and a condescending or paternalistic attitude undermining dignity, unwelcome invitations or requests that are implicit or explicit whether or not accompanied by threats, lascivious looks or other gestures associated with sexuality, unnecessary physical contact such as touching, caresses, pinching or assault.*** Convention 111 itself, defines discrimination to include: ***[a] any distinction, exclusion, preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and [b] such other distinction, exclusion or preference which has the effect of nullifying or impairing the equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with the representative employers' and workers' organization, where such exist, and with other appropriate bodies.*** The Claimant was not treated fairly by the Respondents, and the conduct of the 2nd Respondent against the Claimant had the effect of nullifying or impairing the equality of opportunity or treatment in employment, based on her sex. The importance of ILO Convention 111 in the Employment Policy and Law of Kenya is emphasized by its inclusion under paragraph D, of the Industrial Relations Charter Kenya, revised 30th April 1984. The Social Partners undertook to abolish all discrimination among workers on the ground of race, colour, sex, belief, tribal association or trade union affiliation. The Kenya Government was encouraged under the Industrial Relations Charter to take appropriate measures to safeguard motherhood and ensure health and safety of all women workers.

33. Although Parties did not characterize the treatment of the Claimant by the 2nd Respondent as a form of discrimination, various Instruments on the subject, and facts emerging from the dispute, leave no doubt that the Claimant went through sexual discrimination. The Report of the Committee on Gender Equality 98th Session of the International Labour Conference Geneva 2009, explained:

“ Sexual harassment and other forms of harassment are serious forms of discrimination across the world that undermine the dignity of women and men, negate gender equality and can have significant implications.”

ILO Convention 111 of 1958 bans sex-based discriminatory workplace practices, but does not specify sexual harassment. It provides a broad definition as shown in paragraph 32. The Committee's Report of 2009 noted:

“an important implementation gap concerns sexual harassment, which is a serious form of sex discrimination and a violation of human rights at work.”

The Committee highlighted the importance of taking effective measures to prohibit both *quid pro quo* and hostile environment sexual harassment at work. It was noted that confining sexual harassment to criminal procedures has generally proven inadequate, as the criminal laws may deal with the most serious cases, but not the range of conduct in the context of work that should be addressed as sexual harassment, and the burden of proof in criminal cases is higher, with limited access to redress. The Claimant may in this case, not have found appropriate redress in a Criminal Court, either in Kenya or South Africa.

34. In her Book titled ‘ **An Outline of Recent Developments Concerning Equality Issues in Employment for Labour Court Judges and Assessors- [ILO 1997]**, Jane Hodges discusses ILO Resolutions on gender equality adopted in 1985 and 1991. Sexual harassment is condemned in the Resolution not as a human rights violation, but in the context of safety and health. The 1989 ILO meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment, according to the Author, specifically categorized sexual harassment and violence arising from work as a health and safety issue.

35. Under the Kenyan Legislation, sexual harassment may likewise be deemed a workplace health and safety issue. Section 8 of the Occupational Safety and Health Act No. 15 of 2007, states:

“ An Occupier shall not dismiss an Employee, or discriminate against or disadvantage an Employee in respect of the Employee’s employment, or alter the Employee’s position to the detriment of the Employee, by reason only that the Employee makes a complaint about a matter which the Employee considers is not safe or is a risk to the Employee’s health.”

An ‘Occupier’ means a person in actual occupation of the workplace and includes an ‘Employer.’ The workplace includes any place, and in particular any vehicle, vessel, or hovercraft. It includes any installations on land, foreshore or off-shore. The violation by the 2nd Respondent against the Claimant could therefore be seen as a health and safety issue, beside other issues discussed above.

36. Jane Hodges explains that UN Convention on the Elimination of All Forms Against Women [CEDAW] and the ILO consider acts to constitute sexual harassment when the victim has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment- known respectively as *quid pro quo*. In the case of Phelesia, her objection not only created hostility, but culminated in termination and post- termination threats. Sexual violence has been dealt with through equal employment opportunity and human rights legislation, labour legislation, civil remedies and criminal law. The Kenyan law affords protection in multiple ways, so that it was quite futile of the 2nd Claimant to hold that the Claimant could only seek protection in a Criminal Court in South Africa.

37. One of the most prominent decisions on sexual harassment that has had great influence on labour legislation is the **India Supreme Court case of Vishaka & Ors v. the State of Rajasthan & Ors, [JJ, 1997] [7] [SC 384]**. Their Lordships found that it is the duty of the Employer or other Responsible Persons in the Workplace, to prevent or deter the commission of acts of sexual harassment and to provide the procedure for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. For this purpose sexual harassment includes such unwelcome determined behaviour, whether directly or indirectly, such as: **physical contact and advances; sexual favours; sexually coloured remarks; and showing of pornography and other verbal and non-verbal conduct of a sexual nature that is unwelcome or humiliating to the woman**. The decision can be seen to have influenced our labour legislations enacted in 2007, in particular Section 6 of the Employment Act 2007.

38. The Court may mention that the termination of the Claimant’s contract and the acts of sexual violence happened before the passage of the Constitution 2010. That Constitution may not therefore directly be applicable in the present dispute, but suffice it to say that Articles 1, 3 and 5 of the 1948 UN Universal Declaration of Human Rights discussed at paragraph 30 this Award, of have been anchored in the Constitution. The old Constitution of Kenya similarly carried protections against inhuman and degrading treatment under Section 74, and discrimination based on sex under Section 82. There has never been a legal lacuna in the history of this Country that would permit deviant behaviour of the magnitude demonstrated by Jim against Phelesia. The Labour Institutions Act Number 12 of 2007 which was in force at the time Jim sexually harassed the Claimant, and terminated her contract of employment, allowed the Industrial Court under Section 12, to: **hear and determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any provisions of the Labour Institutions Act, or any other legislation which extended jurisdiction to the Industrial Court, or in respect of any matter which could arise between an employer and employee in the course of employment, between an employer’s organization, a federation and member thereof**. The Court had the jurisdiction to grant damages. Under Section 15 of this Act, the Court could grant compensation, orders of reinstatement or re-engagement. The remedies other than damages, could be granted under the Employment Act 2007, and are still awardable today. The Industrial Court Act 2011 under Section 12 allows the Court to award damages as well as compensation. This Act and the Constitution of Kenya, have, freed the hand the Industrial Court in award of appropriate remedies. This is not to say, that the broad range of remedies were inaccessible before; the new regime has merely crystallized these remedies.

39. As stated by **Adrienne Cruz and Sabine Klinger** in their Working Paper discussed above, ending

gender-based violence in the world of work is a critical step to decent work. Victims of sexual harassment merit monetary damages to compensate for financial loss as a result of dismissal from employment, and to compensate injury to their feelings, humiliation, human dignity, and impairment and nullification of equality of opportunity or treatment in employment. In this dispute, the 2nd Respondent's behaviour to the Claimant was appalling and left her humiliated, sexually violated and jobless. She merits an award of General Damages, whose measure should be commensurate with the physical, psychological and economic injury suffered. The Court Awards-:

[a] The Respondents shall pay to the Claimant one month salary in lieu of notice at Kshs. 120,000 as prayed;

(b) The Respondent shall pay to the Claimant salary for the month of May 2010, at Kshs.120,000;

[c] The Respondents shall pay to the Claimant general damages for sexual harassment, unfair and wrongful termination, at Kshs. 3,000,000;

[d] The total amount of Kshs. 3,240,000 shall be paid to the Claimant by the Respondents within 40 days of the delivery of this Award; and

[e] Costs awarded to the Claimant, to be assessed by the Deputy Registrar of the Court.

Dated and delivered at Nairobi this 28th day of February 2014

James Rika

Judge