



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 715 OF 2011

BETWEEN

MAJOR WILFRED KYALLO KANGULYU CLAIMANT

VERSUS

TETRA PAK LIMITED RESPONDENT

Rika J

CCs. Leah Muthaka & Edward Kidemi

Mrs. Khayesi Advocate instructed by Hayanga & Company Advocates for the Claimant

Mr. McCourt Advocate instructed by Kairu & McCourt Advocates for the Respondent

ISSUE IN DISPUTE: WRONGFUL TERMINATION

AWARD

1. This dispute was initiated at the High Court in Nairobi, as H.C.C.C No. 410 of 1999. It is 15 years from the date it was initiated. Whatever the cause of the delay in hearing and disposing of the dispute, the Court must at the outset apologize to the Parties that they have not had the dispute resolved for such a long time. 15 years is too long a time for an employment dispute to remain unresolved.
2. The Plaintiff was filed on 1st March 1999, and an Amended Plaintiff subsequently filed on 22nd September 2009. The Statement of Defence was filed on 12th April 1999, and an Amended Statement of Defence filed on 29th September 2009.
3. H.C.C.C No. 410 of 1999 was transferred to the Industrial Court upon the adoption of the new Constitution of Kenya, which conferred the Industrial Court with exclusive jurisdiction in employment disputes. It was registered at the Industrial Court as Cause No. 715 of 2011. The Industrial Court gave directions dated 22nd October 2012. The Plaintiff and Statement of Defence from the High Court record were deemed as the Statement of Claim and Statement of Response respectively, under the current proceedings. The Plaintiff became the Claimant, and the Defendant was renamed the Respondent, and proceedings thenceforth, undertaken under the Industrial Court (Procedure) Rules 2010.

4. Major Kangulyu testified on 3rd May 2013 and 21st June 2013 when he rested his case. The Respondent testified through its Learning and Development Specialist Ms. Judy Ndegwa, on 4th March 2014 when hearing closed. The Parties confirmed the filing of their Final Submissions on 1st July 2014, and this Award reserved for delivery today.

5. The Claimant states he was employed by the Respondent on 1st January 1994 as the Security Manager. He also worked as the Transport Manager. His salary was revisable from time to time. It was expressly or impliedly agreed between the Parties that the Claimant would be entitled to *basic salary, leave and leave allowance, medical cover for the entire family, retirement benefits, monthly mileage allowance, and other facilities such as a car allowance. His employment was permanent and pensionable, and he was entitled to serve until the retirement age of 55 years.*

6. In a letter dated 2nd February 1995, the Respondent dismissed the Claimant without a just cause. His last salary was a gross of Kshs. 40,303 per month. The Personnel Manager issued the letter of dismissal alleging the Claimant was dishonest, having unlawfully removed some items from the Company Vehicles, which were advertised for sale. He was also alleged to have committed other frauds.

7. Major Kangulyu stated he was not accorded the opportunity to be heard, contrary to the rules of natural justice. Around 10th February 1995, the Respondent maliciously and without reasonable cause or consent of the Claimant, impounded the Claimant's Motor Vehicle registration KZT 257, a Peugeot 505 Saloon, from a Garage. The Respondent had guaranteed the Claimant to purchase the Vehicle through a loan from the Barclays Bank of Kenya Limited.

8. The Claimant holds the decision to dismiss him was malicious. No particular offence was mentioned in the letter of dismissal and the particulars of dishonesty and fraud were not supplied by the Respondent to the Claimant. He was wrongly deprived of the use and ownership of the Motor Vehicle by the Respondent. The Claimant was willing to pay the loan balance, but the Respondent went on to maliciously dispose of the Motor Vehicle. He was not paid terminal benefits in terms of the contract of employment.

9. The Claimant prays the Court to find his dismissal to have been unlawful and grant him:-.

- a. Loss of earnings at Kshs. 40,303 X 12 X 14 years = Kshs. 6,770,904.
- b. 3 months' salary in lieu of notice at Kshs. 120,909.
- c. Pro-rata leave of 1 month at Kshs. 40,303.
- d. 2 days' salary for work performed during the month of February 1995 at Kshs. 2,687.
- e. Underpayment of transport allowance at Kshs. 168,960.
- f. Refund of money paid by the Claimant toward the repayment for the Motor Vehicle, and the money paid by the Claimant as down payment for the Motor Vehicle at Kshs. 237,000.
- g. Loss of use of the Motor Vehicle from the date of the repossession.
- h. Kshs. 38,000 spent by the Claimant in rehabilitation of the Motor Vehicle.
- i. Kshs. 3,600 paid to the garage when the Vehicle was impounded.
- k. General Damages.
- l. Co sts and interest from the date of filing the Claim till payment in full.

10. Major Kangulyu told the Court he is married, has 4 Children, and has been unemployed from the date he lost his job. He initially worked for the Armed Forces before joining the Respondent. He asked for and was granted honourable discharge from the Forces. He was employed by the Respondent effective from 1st January 1994.

11. He was given the additional role of Transport Manager from 11th February 1994. He was to receive an allowance of Kshs. 14,080 for the additional duties. This was calculated at half his basic salary as the Security Manager.

12. His relationship with work Colleagues was good at the beginning. He did not receive the Kshs. 14,080 promised as allowance for the role of Transport Manager. The Personnel Manager Hussein Alwy was involved in fraud. The Respondent bought a Bus from Mitsubishi. The purchase price was manipulated so that the Company paid Kshs. 300,000 more than was due. The Claimant took up the issue with Alwy who had signed the order. Alwy said it was probably an error in the order.

13. On 2nd February 1995, the Claimant reported to work as usual. Alwy called him and informed him he had bad news for him. Alwy told the Claimant that security at the workplace had become so tight it felt like a Military Barracks. He alleged the Claimant had used a Company tyre without his permission. He asked the Claimant to resign and would be paid all his dues. The Claimant refused to resign and was therefore dismissed. He was not given notice; was not heard; and was not told of any offence he had committed. He was not paid terminal dues.

14. He subsequently wrote to the Respondent through his Advocate Dr. Willy Mutunga [now Hon. Chief Justice of the Republic of Kenya], demanding for redress. He wrote more than once. The President of the Company responded saying he could not do much. The Claimant was 33 years old on termination. He was entitled to work until the retirement age of 55 years. The Employment Handbook allowed the Claimant to receive acting allowance for exercising the role of Transport Manager. The Claimant stated that under the Employment Handbook, mandatory retirement age for males was 60 years, and for females 55 years. He was not issued the Certificate of Service on termination.

15. The Claimant had taken a loan of Kshs. 360,000 to purchase his Peugeot 505. He rehabilitated the Motor Vehicle at a considerable expense. When he went to the garage on 10th February 1995, he was advised Alwy had towed the Vehicle away. Alwy showed to the Garage the Log Book which was retained by the Respondent, and told the Garage the Claimant had been summarily dismissed. The Vehicle was stored at the Respondent's yard. He wrote to the Respondent on 15th February 1995 stating he was ready to continue repaying the loan to the Bank to retain his Vehicle. The Respondent advised the Claimant to pay Kshs. 279,760. The Claimant's Advocate replied on 21st August 1995. There was no further response from the Respondent. The Claimant lost his Vehicle, and was not refunded any money for the rehabilitation work carried out on the Vehicle. He used the Vehicle to work, and to transport his Children to School. He was compelled to use public transport and his children had to use school transport.

16. Cross-examined, the Claimant stated he joined the Armed Forces in 1979. He applied for discharge in 1993. He retired from the Army in May 1994. His letter of appointment by the Respondent is dated 14th September 1993. He was utilizing his accumulated annual leave with the previous Employer, at the time he was appointed by the Respondent

17. His letter of appointment stated his duties would be specified by the Personnel Manager. He did not complain to the Managing Director that he was denied acting allowance for exercising the role of Transport Manager. He supervised 10 Employees. He demanded for acting allowance from the Personnel Manager. He was paid the sum of Kshs. 20,000 as school fees for his Children. It was an additional benefit. He was not supposed to apply for the acting allowance. He had issues with the Personnel Manager.

18. He raised the issue with the Managing Director in a confidential letter which was not available to the Court. He also wrote to the Managing Director on 27th March 1995 after dismissal. He informed the

Managing Director about the non-payment of his dues. He had direct access to the Managing Director, but had no opportunity to discuss his problems directly with the Managing Director. He similarly did not have the time to discuss the issue at the Security Committee.

19. Two Mitsubishi Vehicles were available for purchase. The first was priced at Kshs. 2.7 million, the second Kshs. 2.4 million. The first did not include the building of the Motor Vehicle body, which cost Kshs. 500,000. The Claimant did not bring these discrepancies to the attention of the Managing Director, or the Police. He only raised the issue after he was dismissed. The Personnel Manager collected the money.

20. It was not true that the Claimant exchanged his old tyres for the Respondent's newer ones, saying he would return the Respondent's tyres on return from his journey to Machakos. The statement by Michael Epale, a former workmate of the Claimant, that this was what took place, was incorrect.

21. The Claimant agreed he alleged in a letter dated 3rd February 1995, that he borrowed the Respondent's tyre. He stated he had informed the Security Supervisor. He did not take a radio and spanner as alleged by Epale. He took the tyre from the Respondent in accordance with the workplace procedure. There was nothing wrong in taking the items, so long as he followed the correct procedure. He was asked to resign; he refused to do so. He did not know if he would have been paid terminal benefits, if he resigned.

22. The Statement of Claim alleged the Claimant was not given the reason for termination, or given the opportunity to defend. In the letter of 3rd February 1995, the reason was stated. The Claimant wanted to pay the balance of the loan due for purchase of his Peugeot. It was Kshs. 234,000. The Respondent did not ask to be paid the money. He did not know if the Vehicle was auctioned for Kshs. 150,000.

23. He was to work up to the age of 60 years. He did not know if the contract made room for regular termination or early retirement. The Company Human Resource Policy provided for regular termination and early retirement. He was willing to work up to the age of 60 years. Termination could be done by the Managing Director or through his delegate. The Claimant did not receive his certificate of service.

24. He bought the Peugeot through a loan. He gave it a valuation of Kshs. 420,000. He did not know if there was in place a report placing the value at Kshs. 420,000. He did the spray painting and fixed alloy rims. The tyres were good. He only borrowed the tyre from the Respondent for security reasons. The Respondent asked to be paid Kshs. 279,000 for the Vehicle. The Claimant did not have the money.

25. He should be paid loss of user, the costs incurred in transporting his Children to School, because the Respondent deprived him of the use of his Vehicle. He did not write the invoices on transport costs. They were written by a Transport Company. He did not get a job after termination. The various Employers he approached told him there were no vacancies. If the Respondent had given to him his certificate of service, it would have been different. The Potential Employers nonetheless, did not mention to him that the missing certificate of service was the reason for there being no vacancies. He disagreed that he was dismissed fairly on account of dishonesty.

26. Major Kangulyu concluded his evidence on redirection, with the clarification that he retired from the Army in 1994. He was appointed by the Respondent in 1993. He underwent normal discharge procedures which ended May 1994. He had normal, approved annual leave of 6 months, in the transition period.

27. There was a verbal agreement for payment of acting allowance between him and the Respondent. The Personnel Manager always promised the allowance would be paid, and the Claimant saw no reason to escalate his demand for payment to the Managing Director. He was assigned extra duties in February 1994. There were various violations at the workplace with respect to security breaches. The Claimant was waiting for the right time to bring these to the Security Committee. Epale signed his statement implicating the Claimant a day after the Claimant's dismissal. He confided in the Claimant he was threatened he would be dismissed if he did not implicate the Claimant. The Claimant worked for 13 months for the Respondent. There was a procedure for borrowing items from the Respondent. He signed the gate pass.

He refused to pay for the Vehicle as demanded by the Respondent because it had some parts missing. He prays the Court to allow the Claim.

28. The Respondent agrees the Claimant was its Employee, from 1st January 1994 to 2nd February 1995. His contract was terminated lawfully, fairly, in accordance with the Employment Act Cap 226 the Laws of Kenya.

29. The Claimant was engaged in acts of misconduct. He removed and took possession of Company property. He misappropriated Company money. The Respondent did not act maliciously in auctioning the Claimant's Peugeot 505; the Respondent merely discharged its obligation as guarantor of the loan to Barclays Bank of Kenya. The Claimant failed to settle his financial obligation. The Respondent does not agree occasioning any loss to the Claimant by discharging its obligation under the loan arrangement.

30. Judy Ndegwa confirmed the Claimant was employed by the Respondent on 1st January 1994, and dismissed on 2nd February 1995. There were three grounds for the termination decision: the Claimant removed and took possession of a radio cassette from the Company Vehicle; he took Company tyres; and thirdly, took cash of Kshs. 5,300 from the Company.

31. He bought a Vehicle, a Peugeot 505, through a Barclays Bank loan, guaranteed by the Employer. He defaulted in loan repayment after summary dismissal. The Respondent impounded the Vehicle and sold it for Kshs. 150,000 to meet the loan obligation. The Respondent did not have any obligation to compensate him for the improvements made on the Vehicle.

32. In cross-examination, Judy informed the Court she has worked for the Respondent from 2007. She was familiar with the procedure on termination. The letter of summary dismissal gave the reason for termination as fraud. It was not specific. There were statements made by witnesses, but no resultant Investigations Report.

33. The Respondent has a procedure for dismissal of Employees. The Employee would be invited for a discussion. There was no written warning before dismissal. Warning could be verbal. There were no records of the Claimant's previous misconduct. No minutes recording the discussion between the Parties at the disciplinary session, were available in Court. Terminal benefits were not paid.

34. The statement of Michael Epale is dated 3rd February 1995, which was after the dismissal. Judy would not say why the statement came after the decision. The statement referred to removal of tyre, and also added the removal of a spanner at certain point. This inconsistency was attributed to the author's use of language. Kshs. 5,300 was meant to be used in maintenance. The Claimant misappropriated the money. The Garage Man took receipts to the Respondent showing the Claimant had misappropriated the money. Judy did not know if the Claimant was aware of this accusation.

35. He was allocated transport duties through an internal memo. The Peugeot was valued on 18th October 1995 at Kshs. 105,000. Initial valuation was Kshs. 300,000. This was a major variance in valuation. Devaluation may have taken place at the Garage. The Respondent did not inform the Claimant when the Vehicle was towed. The improvements were not taken into account. He made demand for the costs of improvement, or return of the car. He said he was willing to pay the outstanding loan. He was not given the chance to clear the loan. There was no sufficient notice to clear the loan. Judy was not aware the Respondent was required to issue the Claimant with a certificate of service. Termination was fair.

36. In conclusion, Judy testified on redirection that the dismissal letter dealt with dishonesty, which is a generic term. Dismissal in such a case is normal. The Claimant conceded he had taken Company tyres. He agreed to his mistake. He has not been working for 14 years, and does not claim terminal benefits in this Court. He offered to pay the balance of his loan. He did not do so. Termination was fair.

The Court Finds and Awards:-

37. The dispute arose in 1995. The Parties agree, and the Court clarified in its Directions, that the substantive law governing the employment relationship, and upon which the dispute should be determined, is the employment law as it was in 1995.

38. The substantive law was the Employment Act Cap 226, the Regulation of Wages and Conditions of Employment Act Cap 229 the Laws of Kenya, and Section 15 of the Trade Disputes Act Cap 234 the Laws of Kenya.

39. There were two positions in termination of employment jurisprudence. One, which was prevalent due to the wide publication of Civil Court decisions, revolved around the principle of employment at-will of the Employer. Under this principle, the Employer could terminate the Employee's contract for good cause, bad cause or no cause. There was no need to give valid or invalid reasons, and the Employer was under no obligation at all, to act fairly in carrying out termination. Two, the Industrial Court interpreted Section 15 of the Trade Disputes Act, as requiring the Employer to give fair and valid reason, and act fairly in the process of termination. Because the decisions of the Industrial Court were given sparse coverage, this second position on the law of termination of employment, remained in the backwater.

40. The Employer in the first position had no obligation to pay compensation for termination carried out unfairly or unlawfully. All the Employer was required to do is give the Employee written notice or pay the Employee notice pay the equivalent of the salary due to the Employee in the notice period. In the second position, the Industrial Court could grant the Employee the orders for reinstatement, re-engagement or compensation. The first position found legal justification under the repealed Employment Act, the second under Section 15 of the Trade Dispute Act Cap. The *Industrial Court in Cause Number 81 of 2011, between Margaret Omondi v. the Kenya Revenue Authority [2013] e-KLR [Radido J]* adequately discussed the two positions.

41. Eventually the Industrial Court's position gained wide acceptance and the principles of termination of employment under the Trade Disputes Act as elaborated in successive decisions of the Industrial Court, were codified under the Employment Act 2007. Other principles similarly developed by the Industrial Court such as '*fair labour practices*' have only recently entered the constitutional lexicon of this Country.

42. The substantive law in place in 1995 must therefore be understood within these parameters. The Employees had a choice of forum and depending on the individual Employee's Trade Union Status, could approach the Industrial Court in 1995, and obtained a more generous outcome.

43. This said, the Court cannot place the Claimant at a disadvantage, and is of the view that he should be treated as the Industrial Court of 1995 would have treated him. There is evidence that the Human Resource Policy, to which his contract of employment was subject, required fairness of treatment in dismissing Employees, or in otherwise terminating their contracts of employment. The laws then, as of now, set the minimum employment standards. The Parties could negotiate terms and conditions of employment friendlier to the Employee, than those given under the law. The Human Resource Policy of the Respondent offered such superior terms and conditions of employment, than the Claimant could have under the doctrine of employment at-will.

44. Under Section 17 of the old Employment Act as pointed out by the Claimant, the Employee was not precluded from alleging or disputing whether the facts giving rise to the same, or whether other matters not mentioned in Section 17, constituted justifiable or lawful grounds for the dismissal. This disputation could only suggest that the Employee is given some form of a hearing, or at the very least, an opportunity to explain his narrative. The Court has not found a good reason why an Employee seeking redress from the Industrial Court in 1995, would have the remedies of reinstatement, re-engagement and/or compensation for wrongful acts inflicted by the Employer, whilst another Employee seeking for remedies under another legal regime, for similar infringements, would be denied a raft of generous remedies based on an antiquated principle known as employment at-will. Under our old Constitution, all persons were entitled to equal treatment before the law.

45. The Court is satisfied that the right questions to ask in determining the propriety of the Respondent's decision, made against the Claimant in 1995, are these: whether the Respondent had valid reason to justify termination of the Claimant's contract of employment; whether the decision was arrived at fairly; whether the Claimant merits damages for unlawful termination; whether he should be paid terminal benefits; and be paid the monies relating to the Motor Vehicle.

46. In justifying the termination decision, the Respondent gave three reasons in Court. These were given by the Respondent's Witness Judy Ndegwa: the Claimant removed a radio cassette player from the Respondent's Vehicle; he took the Respondent's tyres for his own use; and stole Kshs. 5,300 from the Respondent.

47. There was no evidence given in support of these allegations. The letter of dismissal dated 2nd February 1995, charged that the Claimant committed "*the offence of being dishonest in connection with company property, in that you unlawfully removed some items from the company vehicles, which were advertised for sale, and you also committed other frauds....*"

48. The Respondent conceded these were at best generic accusations. The Claimant would be hampered in responding to the charges against him, without details, or clear evidence. The actual evidence, upon which the charges were laid, was given by one Michael Epale.

49. The statement recording such evidence was made on 3rd February 1995, a day after the Claimant's dismissal. The Respondent gathered information after the decision. This was unusual and gave the Claimant no room to interrogate the maker of the statement.

50. The Statement is poorly recorded. It is difficult to get the message meant to be conveyed. What is the Court on any other trier of facts to make of such statements attributed to Michael Epale as "*The Mojar has talked to Mr. Alwy the Personnel Manager that I Michael Epale has been a sign... At the Garage the Machinic told Mojar that his car KZT needs petrol... I told him that spare tyre and spanner is missing... he ask me why... A said I sow Mojar.....*" and so on and so forth.

51. The Respondent's Witness attributed these confusing statements to the lingual style of the maker of the statement. Employees facing termination of employment need to understand the accusations against them, or other reasons for termination in clear terms. The Court finds the reasons for termination were not well stated, whether in the letter of dismissal, the statement of Michael Epale, or the evidence in Court of Judy Ndegwa.

52. Assuming the Claimant did take a spare tyre from the Respondent for his journey to Machakos, he gave evidence to the effect that he followed a procedure in place at the Respondent, involving the supervisor and provision of a gate pass. This evidence was not contradicted by the Respondent. The allegation that the items he took were advertised for sale, was not substantiated. The Court is satisfied that termination was not well grounded on valid and fair reasons.

53. The procedure contained in the Respondent's Human Resource Policy was not adhered to. There was no evidence given of any discussion between the Parties, about the unacceptable conduct of the Claimant. There were no warnings. There was no proper record of investigations undertaken by the Respondent, the only witness statement having been recorded after termination. The offences as seen above were not made clear to the Claimant. The Claimant stated he wrote to the Managing Director and to the overseas offices of the Respondent, expressing his grievance, but received no response. The Claimant appears to have had personal differences with the Personnel Manager Hussein Alwy, which influenced the decision to terminate his contract of employment.

54. *The Court is satisfied the Claimant was wrongfully treated, and grants him damages, the equivalent of 5 months' gross salary at the rate applicable as at the date of termination.*

55. The claim for loss of earnings, calculated at Kshs. 6,770,904, is without legal or factual foundation. The Claimant had no reason to expect he would have continued working invariably until the age of 55

years or 60 years. His contract allowed either party to terminate the contract by giving the other 3 months' written notice, or payment of 3 months' salary in lieu of notice. The Claimant has asked for 3 months' salary in lieu of notice, exercising his right under the termination clause, and validating that mode of termination. The claim for a lifetime of salaries the Claimant has not worked for, is without merit.

56. The Claimant joined the Respondent from the Army. He voluntarily retired prematurely from the Army, and would certainly have had the freedom and the choice to retire early from the Respondent. The Court adopts the binding view of the ***Court of Appeal of Kenya at Nyeri in Appeal No. 25 A of 2013 between Elizabeth Wakanyi Kibe v. Telkom Kenya Limited [2014] e-KLR*** where the Court held that Employees whose contracts are terminated have no reason to sit back and wait to enjoy anticipatory remuneration. They must move on. The claim for lost earnings at Kshs. 6,770,904 is rejected.

57. The claim for 3 months' salary in lieu of notice is well-founded in the contract and the law regulating the relationship, and is allowed.

58. The Claimant seeks 1 month pro-rata leave at Kshs. 40,303. He worked for 1 year, from January 1994 to February 1995. His contract entitled him to 21 days of annual leave. There was no evidence that he took leave, or received pay in lieu of leave. No records were given by the Respondent to contradict the Claimant on this. His annual leave days were not worth 30 days' salary, but 21 days' salary. ***The Court allows him 21 days of annual leave pay computed at Kshs. 32,552.***

59. The Claimant was entitled to his full salary, up to the last day worked. ***He merits the 2 days' salary for work done on 1st and 2nd February 1995 which the Court computes and grants at Kshs. 3,100.***

60. The claims surrounding the rehabilitation, repossession, sale of the Peugeot 505 seems to the Court un-awardable. The Claimant bought the Motor Vehicle through a loan guaranteed by the Respondent. He failed to repay the loan. He alleges to have asked the Respondent through his Advocate to pay the loan and redeem the Vehicle, but that the Respondent did not give him the opportunity, or consider the expense he had incurred, in the purchase and rehabilitation of the Vehicle.

61. The Court is satisfied the Respondent exercised its right under the guarantee, and was not obliged to compensate the Claimant for whatever improvements he alleges to have made on the Vehicle. He was given adequate chance, from the date the Vehicle was impounded on 10th February 1995, to the date the Vehicle was auctioned on 18th December 1995- a period of almost 1 year to redeem his Vehicle. He just kept writing letters, and made no serious cash offer to the creditor, or the guarantor, to keep off the auctioneers. He testified he did not have the money to redeem the vehicle. Alternatively, he testified the vehicle had been cannibalized, and he refused to have it back. It is doubtful if he had the capability to redeem the vehicle, regardless of the amount of time extended to him, to attempt such redemption.

62. It follows from this that the Court finds no liability owing to the Claimant from the Respondent, on loss of user, refund of rehabilitation costs, own and children costs of transportation, down-payment, and garage costs. These were unfortunate losses to the Claimant, but which flowed from his inability to meet a contractual obligation in a commercial transaction.

63. The Claimant was able to show that he undertook extra duties as Transport Manager from 11th February 1994. There was a handing over report, entrusting him the additional role. The Human Resource Manual allowed him to receive an acting allowance for the 12 months served. He discharged this role. He was not paid the sum of Kshs. 14,080 per month in acting allowance as promised. There was no evidence from the Respondent that transport duties were part of the security docket, or that acting allowance would be paid if the extra duties were undertaken in a higher position within the organization. This was not the communication made to the Claimant when he accepted the additional role, and discharged that role. As correctly argued by the Respondent, acting allowances are ordinarily paid when a role holder, takes up additional responsibilities of a higher graded role for a limited period of time. The Respondent however, did not show that the transport role was not of a higher grade than the security role. The Claimant was not advised that he would undertake additional responsibilities, for no compensation. ***He is allowed acting allowance at Kshs. 14,080 for 12 months, amounting to Kshs. 169,960.*** In total it is Ordered:-

a. The Respondent shall pay to the Claimant, within 30 days of the delivery of this Award, damages for unlawful termination at Kshs. 201,515; 3 months' salary as notice pay at Kshs. 120,909; 21 days of annual leave at Kshs.35,552; 2 days worked at Kshs. 3,100; and acting allowance of Kshs. 169,960;

b. The Respondent to release to the Claimant the Certificate of service forthwith;

c. Costs to the Claimant;

d. The terminal benefits in paragraph (a) above, amounting to Kshs.329,521, shall be paid with an interest of 14% per annum, calculated from 1st March 1999 when the Claim was filed to the date of payment in full; and

e. The damages in paragraph (a) above, amounting to Kshs.201,515, shall be paid with an interest of 14% per annum calculated from the date this Award is delivered, to the date of payment in full.

Dated and delivered at Nairobi this 17th day of September 2014

James Rika

Judge