



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 344 OF 2010

CECILIA MUTHONI NJOROGE CLAIMANT

VERSUS

NAIROBI STOCK EXCHANGE RESPONDENT

Mr. Mugambi Mungania for Claimant

Mr. Karango Ngethe for Respondent

JUDGMENT

1. This suit was commenced by way of a memorandum of claim dated 21st March 2011 and filed on 22nd March 2011. The Claimant had initially filed a Memorandum of Claim dated and filed on 30th March 2010 which Memorandum was withdrawn with leave of Court.

Relief sought

2. The Claimant seeks as against the Respondent Nairobi Stock Exchange Ltd;

(a) a declaration that the Respondent's termination of the Claimant's employment was unjust, unequitable, unfair and unlawful;

(b) an order rescinding the Respondent's termination of the Claimant's employment and reinstating the Claimant back to work in a position within the new organizational structure which is equal and / or similar to her previous position before her suspension and subsequent termination together with the corresponding benefits with effect from the commencement of the new organizational structure;

(c) (i) payment of half salary which was unpaid during the period of her unlawful suspension from June 2009 to April 2010 which half basic pay amounts to Ksh.1,609,266/=.

(ii) additional remuneration from the date of the commencement of the new organizational structure;

(d) payment into the Respondent's staff provident fund of 10% of the basic pay stated in prayer c(i) above being the respondent's contribution unpaid during the Claimant's

unlawful suspension amounting to Kshs.160,927/= and / or such an amount corresponding to the Claimant's salary under the new organizational structure;

(e) Compensation for unlawful, wrongful termination and / or breach of contract of employment amounting to twelve (12) months' salary based on the claimant's corresponding salary under the respondent's current organizational structure.

(f) costs of this cause and interest on all monetary payments at Court rates.

In the alternative to reinstatement if not granted by the Court,

(a) three months' salary in lieu of notice and payment in lieu of leave days due;

(b) any other relief the Court may deem just;

3. The Claimant filed a supplementary Memorandum of Claim dated and filed on 11th July 2011 with leave of Court wherein was disclosed that the Respondent had on its own motion deposited in the Claimant's account with CFC Stanbic Bank Kshs. 725,730.75 on 24th August, 2010; and Kshs.1,541,293.91 on 9th September, 2010 being terminal benefits due and owing to the Claimant.

The Claimant promptly directed the bank to return the funds to the source which was duly done.

Facts on which the claim is premised.

4. The Claimant was at all material times an employee of the Respondent in the position of Head of Trading and Surveillance. As at the time of suspension and subsequent termination, she earned a salary of Kshs.292,593.87 per month.

5. The Claimant had a written contract of employment with the Respondent dated 24th June 1991 produced as annex (MN-1(a-b) to the memorandum of claim.

6. The Claimant was one of the founder employees of the Respondent and had started at the humble position of statistical Assistant earning a basic monthly salary of Kshs.5,400/=. She had grown through the ranks to the present position.

7. She had an extra-ordinary career growth at the Respondent's place, had a very clean record throughout the eighteen (18) years of service and in her own words played a key role in getting the Respondent to where it was at the time of her suspension and subsequent termination.

8. She was entitled to 30 days leave per annum, a medical cover and other benefits commensurate with her position of employment.

Suspension and Termination

9. By a letter dated 16th April, 2009, Mr. Peter Mwangi, the Chief Executive of the Respondent wrote to the Claimant, M/S Cecilia Njoroge as follows:

"information reaching this office indicates, that you were involved in improper trading activities through the Nyaga Stock Broker, Limited between August 2005 and March 2008.

It is alleged that you were maintaining over 200 trading accounts at Nyaga Stock Brokers Limited and the accounts included those of Njeri Mwaura, your daughter who is a minor and that of Dorcas Wanjiru your grandmother aged 95. Further evaluation revealed the underlisted:

1. *That you were involved in share purchasing even where you had insufficient funds*

in your accounts; therefore contravening the Capital Markets Authority (CMA) requirement for clients to make appropriate arrangements for funds / securities with the stock broker prior to trading;

2. *That you were involved in suspicious share purchases and sales before and / or after corporate announcements;*

3. *That you were involved in issuing of bouncing cheques in some of your transactions an offence that is criminal in nature.*

“These allegations, as leveled against you, would constitute an offence that is gross in nature as it involves use for personal gain unpublished price sensitive information and being the Head of the Trading Function, this would be in direct conflict with your responsibilities. The act in itself, if found to be true would be violation of the regulatory requirements of trading in securities.

This in turn has led to the public having a negative perception of the Nairobi Stock Exchange, denting its image and reputation. Further, it has led to a belief that our trading system is compromised.

To protect the reputation of NSE from the allegations of abuse of confidential information and / or exploitation of unpublished price sensitive information this letter is sent to request you to show cause why disciplinary action should not be taken against you.

Your written response should reach the undersigned by close of business on Monday 20th April 2009.”

I have reproduced this letter in full as it captures all the essential elements of the dispute.

10. By a letter dated 17th April 2009, a day later, the Claimant responded to the letter by the Chief Executive Officer above and the response may be summarized as follows;

- (i) receipt of the letter is acknowledged;
- (ii) the Claimant questions the source of the allegations made against her;
- (iii) requested for more details and specificity to enable her fully respond to the allegations;
- (iv) with regard to the 1st allegation;
 - (a) she denied maintaining 200 accounts with Nyaga Stock Brokers Limited.
 - (b) with regard to Regulation 23, of the Capital Markets, (Licensing)(General) Regulation 2002, the claimant states that it requires a Stock broker to execute an order only where the “*Client has made sufficient arrangements for funds or securities*” and not otherwise.
- (v) with regard to the 2nd allegation;
 - (a) she stated that no specific instances of use / misuse for gain of confidential information and unpublished price sensitive information were disclosed to enable her respond to the allegation.
 - (b) she denied that she was an “*insider*” and states that she could have had in her possession or knowledge confidential or unpublished price sensitive information on listed securities. She

attached to the letter annexures 1a – e which contained details on circulation of the revised mail procedure for the Stock Exchange;

11. Procedure of receiving and handling company announcements from the listed companies as revised on 29th September, 2006 which mail is received by the Chief Executive Officer and distribution of the announcement is done simultaneously to the Trading floors staff, the Surveillance Section Compliance Department, and other relevant Departments and staff from the Chief Executive Officer or his assignee.

12. The Trading and Surveillance Department's Mail Procedure by designated officer and corporate announcements are actioned immediately upon receipt simultaneously by the Trading floor personnel and the Surveillance staff as a further control measure and details of receipt of mail in the Trading and Surveillance Department from the C.E.'s office and distribution to the Trading and surveillance Department.

(vi) With regard to the 3rd allegation of issuing bouncing cheques, she stated that no specific instances were cited to allow her to respond appropriately. She further explained that cheques are returned for a wide range of reasons some being of technical nature including unsigned cheques, or other errors on the face of the cheque sheet. She therefore requested for specifics of the allegation.

(vii) Regarding allegation number 4, compromise of trading system and negative perception of the National Stock Exchange (NSE), the Claimant explained that NSE had been in existence for 54 years and it is a critical national institution governed by a Board of Management, systems, checks and balances to ensure that the wealth of the nation is protected from the action of any single individual.

13. As the Head of Trading, she said she had no reason to believe that the Automated Trading System (ATS) which is the platform for the NSE'S core business had been compromised in any way. She added that the consequences of such allegations, if true would be unthinkable. She exonerated herself completely from any actions that would compromise the NSE. She summed up by stating that she had spent her entire career spanning 18 years with NSE. In this period she has been responsible for the trading function and settlement and had immensely contributed to the development of NSE in particular and the capital markets in the region.

14. She in particular noted that in the last performance appraisal she was rated the best Head of Department.

15. That *"At no time during my entire career have I been subjected to disciplinary action or my integrity been questioned."* She produced annexure 3a&b to the letter detailing her CV and performance over the period. Indeed her record at NSE was glowing and overly impressive.

16. She pleaded that *'undefined and unsubstantiated allegations from undisclosed sources'* be not be used to injure reputation and career built over many years. She put the Respondent to strict proof on these matters and to ensure the rules of natural justice were observed.

17. The Claimant in Court restated the position articulated in the letter showing cause why her services ought not be terminated.

18. By a letter dated 20th May 2009 the CEO of the Respondent Mr. Mwangi acknowledged receipt of the response by the Claimant and reiterated the seriousness of the charges levelled against the Claimant and undertook to conduct further investigations. Meanwhile, he suspended the Claimant from employment with full pay except payment of any benefits and allowances during the period of the suspension.

19. The decision of the committee was to be communicated to the Claimant in writing. She was directed to hand-over her duties and responsibilities to one Mr. David Wainaina to act as Head of Trading and Surveillance and to clear with Human Resource Department.

During suspension she was to sign in once a week with the CEO failing which she could be automatically dismissed.

20. The Claimant responded to the letter of 20th May 2009 on 28th 2009 by writing to the chairman, NSE regarding her suspension from duty. She committed to comply with the directive by the CEO but reiterated her innocence. She took exception to the manner of her suspension and sought the Board 's intervention and guidance. She noted the following;

1. the suspension was not by the Board as the letter of suspension indicated that the decision would be ratified by the Board later;
2. the Human Resouce Manual clause 11.2 provides that disciplinary cases regarding the Chief Executive and Head of Departments are to be handled by the Board;
3. that the CEO was now acting as the accuser and the judge in the matter;
4. the allegations were vague and unsubstantiated;
5. she has not been provided with the particulars she had requested for to enable her provide an exhaustive response;
6. the matter had been leaked to the press as evidenced by an article in the Nairobi Star daily, of 23rd May 2009;
7. she reiterated her good record and innocence and requested the suspension to be lifted and that she be paid her full salary and benefits until the matter is finalized.

21. The Court has perused and noted Regulation 11.2 with regard to discipline of the Chief Executive and head of Departments. These are to be handled by the board.

22. The Court also notes that regulation 11.7 on suspension does not provide for the suspension of the Chief Executive Officer and Head of Departments which are the responsibility of the Board.

23. The Staff disciplinary Committee is therefore excluded from disciplining the Chief Executive and the Head of Department. The Court further notes, managers, other than the Chief Executive Officer and Heads of Department are subject to the Disciplinary Committee and may be suspended by the Chief Executive on full pay excluding benefits and allowances.

24. In terms of Clause 11.8 "For senior managers (e.g. Chief Executive, Company Secretary, Internal Auditor and Heads of Department), to be terminated may only be mandated by the Board of Directors.

25. By a letter dated 4th June 2009, the chairman of the Board Mr. Edward Njoroge wrote to the Claimant stating *inter alia* that the Board;

(i) had ratified the decision of the CEO to suspend her on half pay in a Board meeting of 3rd June 2009;

(ii) had directed the CEO to institute investigations into the matter upon consideration of the Claimant's response to the notice to show cause;

(iii) directed the investigation be completed by 30th June 2009 and the findings be "*presented to the Finance & Manpower committee, which will then make its recommendations to the Board.*"

26. By a letter dated 12th June 2009, the CEO forwarded the investigation report to the Claimant and invited her to attend a disciplinary hearing before the Finance and Manpower Committee of the Board on

12th June 2009.

27. The report was produced as an annexure to the memorandum of claim and marked “(MN-5C” page 34 – 38. We shall deal with this as part of the defence preferred by the Respondent shortly.

28. The Claimant responded to the letter of 12th June 2009 on 15th June 2009. While appreciating the opportunity to meet the Finance and Manpower Committee of the Board of the Exchequer requested for;

(i) annexures to the PWC Forensic Audit Report, to enable her prepare her defence;

(ii) requesting more time to prepare her defence since the allegations comprised 22 pages and the allegations were of a serious nature some bordering on criminal conduct. She indicated that she required time to prepare properly and also seek legal advice. The notice was for 3 days which she deemed inadequate for the purpose.

29. In short she requested for the copy of the entire PWC Forensic Audit Report on which the charges were founded and had not seen it and requested for five (5) days to do that.

30. The Respondent replied to her by a letter dated 16/6/2009 in which it denied having relied on the PWC Forensic Audit Report to prefer the charges. The Respondent indicated that the charges were based on its own investigations which had been provided to the Claimant. Respondent also stated that it had only received the relevant portion of the PWC Forensic Audit Report and not whole of it. That they had also only received the relevant extracts of the Audit Report from Capital Markets Authority (CMA) to facilitate the investigations. These were attached and forwarded to the Claimant. They regretted the failure to attach the same to the letter of 12th June 2009. The Claimant was granted 5 days to prepare her defence. The written response to be received on 24th June 2009 and to be advised when to meet the committee.

31. The Claimant responded on 19th June 2009, thanking the Respondent for the extension of time and provision of further documents. However she reiterated the necessity of the PWC Forensic Audit Report in its entirety to enable her prepare her defence and other documentation that had not been received including the communication of 6th March 2009 in which the directive from the (CMA) referred to in the NSE Investigation report and to identify and present the author of the NSE Investigation Report.

32. The Claimant provided a summarized response to the NSE CE’s letter dated 12th June 2009 and annexures thereto in which she made a blow by blow response to the allegations made against her.

33. Meanwhile by a letter dated 24th March 2010 the CEO of the Respondent Mr. Peter Mwangi wrote to the Claimant informing her of a new organization structure of the Respondent which was to take effect on 1st May 2010.

34. The Claimant was invited, like other interested staff to apply for a maximum of three (3) positions by 1st April 2010. She was also informed that those who opted for voluntary exit should complete the voluntary exit forms provided and return them to the CEO by 29th March 2010. That interviews for the new position would be conducted in the month of April 2010.

35. In the new structure provided at page 61 of the memo of claim, the position of Head of Training and Surveillance held by the Claimant at the time had been abolished.

The voluntary exit proposal is on page 65 – 66 of the Claimant memorandum.

36. The Claimant wrote to the chairman of the Board on 25th March 2010, regarding her suspension and the implementation of the new NSE organisational structure. She raised the following issues;

- (i) almost one year down the line she was still awaiting the outcome of the investigations and she still remained on suspension and in the dark;
- (ii) meanwhile, she had been invited to three (3) meetings to which the CEO requested her to resign and be paid a certain “*package*”;
- (iii) she had refused the offer to resign stating that her reputation was more important than the package;
- (iv) that she awaited the final formal communication from the Board on the outcome of the investigation to enable her make career and personal decisions;
- v) on 9th March 2010, she had received a short text message inviting her to attend a staff meeting yet she was still on suspension;
- (vii) on 25th March 2010 she received a letter dated 24th March 2010, informing her that her position at NSE did not exist anymore and should choose to exit voluntarily by the 29th March 2010 or apply for a new position by the 1st April 2010;
- (viii) she requested the disciplinary process to be expedited and concluded preferably by close of business by 26th April 2010 for fairness to prevail.

37. By a letter dated 29th April 2010, which made reference to the letter of suspension dated 4th June 2009, and a hearing held on 25th June 2009, the employment of the Claimant was terminated as Head of Trading and Surveillance at the NSE.

38. In the said letter she was offered the following terminal benefits.

- (i) 1^{1/2} salary for the month of April 2010;
- (ii) three months’ salary in lieu of notice;
- (iii) payment in lieu of accrued leave days; and
- (iv) provident fund entitlements to be paid in accordance with the provisions of the NSE provident fund;
- (v) a certificate of service to be issued.

She was requested to make final clearance.

39. The Claimant confirms that those payment were made directly to her account but she gave instructions that the money be returned to its source.

40. Pages 75 – 76 at the memo of Claim constitutes a short report of the disciplinary proceedings by the Finance and Manpower Committee of the NSE Board of Directors on 25th June 2009.

41. The Board had found that the explanation given by the Claimant in writing and in her oral submissions were insufficient. The committee found that it was entitled to recommend summary dismissal of the Claimant but opted to recommend a normal termination on account of the Claimant’s long service with NSE.

42. The findings of the investigation are on page 77 as follows;

Finding 1

The Claimant had issued cheque numbers 177 and on December 22nd 2006 of Kshs.348,000 and Kshs.400,000/= respectively to finance securities transactions. These cheques subsequently bounced on January 6th 2007. It was concluded that issuing of bouncing cheques was a misdemeanor under **Section 316A** of the Penal Code and contravened provision 11.3.2(IV) of the NSE HR manual.

Finding 2

43. Transactions in the Claimant's account and accounts controlled by her at Nyaga Stock Brokers indicate that she received special favours from the firm which were not disclosed to the NSE Chief Executive. The special favours were in conflict of interest with her position at NSE and contravened provisions 11.3.2 (Viii) 11.33 (Viii), 12 (iv) and 12.1 of the HR Manual. The favours are enumerated there under.

44. It is the Claimant's case that the purported suspension, disciplinary process and the eventual termination were flawed, unlawful and null and void.

45. That the CEO usurped the power of the Board by directing the Finance and Manpower Committee to discipline the Claimant and to take arbitrary decisions against her not sanctioned by the Board.

46. That the HR Manual relied upon in findings I and 2 upon which she was found guilty and dismissed was not operational at the time the said offences were alleged to have been committed.

47. That the conduct comprising the two findings on which the termination was made constituted matters done or alleged to have been by her in her private capacity and not at work and no dismissible offence was disclosed in the circumstances at all.

48. That the suspension and the termination were actuated by malice and should be set aside and the Claimant be reinstated to her job and in the alternative be paid commensurate damages in addition to payment of appropriate terminal benefits.

49. Meanwhile the claimant had instituted urgent motion to restrain the Respondent from terminating her employment in Cause No. 344 of 2010 (this matter) and interim orders were issued on 30th April 2010. By a letter dated 3rd May 2010, the Claimant was reinstated pursuant to the Court orders to her position as Head of Trading at NSE. The letter is on page 79.

50. By a letter dated 17th June 2010, the claimant was directed by the CEO to take her 24 days accrued leave with effect from 18th June 2010. She did not return to work therefore.

51. The High Court in Petition No. 9 of 2010 stayed the orders of the Industrial Court by an order dated 16/7/2010. Consequently the Claimant was advised by a letter dated 21st July 2010, that the letter of termination dated 29th April 2009 stands.

HR Manual

52. On page 83 of the memorandum of claim is an email correspondence from a staff by the name Mr. Andrew Wachira to the management dated 19th February 2009, headed Draft HR Manual.

53. The staff Andrew Wachira was raising concern on code of conduct contained in the HR Manual and sought clarification on when the HR Manual came into effect to replace the existing HR Manual. Various other concerns were raised about the proposed code of conduct.

54. An email dated 20th February 2009 by one Lucy Kamau to all staff of NSE titled Staff Regulations

contains three attachments;

- (i) code of Ethics-Approved November 28, 2008;
- (ii) HR Manual (final); and
- (iii) Securities Disclosure Form.

55. In the email, Lucy Kamau brought the attention of all staff to the existence and effectiveness of the two underlisted documents namely;

1. The Human Resource Policy Manual;
2. The Code of Ethics.

The staff were guided in the letter that from henceforth;

- (i) to disclose the securities held using the form provided as '*Securities Disclosure Form*'.

The completed forms were to be submitted to the HR Manager by Friday the 27th February 2009 for onward transmission to the CEO for noting as required.

56. Staff were also advised that the documents are in force but are only guidelines that may be changed as and when necessary.

57. It was the Claimant's case that this was the first time ever, NSE staff were informed of the HR Manual and the code of conduct and the documents were not in operation before the email communication on 20th February 2009 and therefore it was deceitful for the Respondent to purport to terminate her employment relying on non-existent policies on disclosure and issuance of bouncing cheques in private transactions. The Respondent however, refutes these allegations by the Claimant stating that the code of Ethics was circulated to the staff on 11th December 2007 by Mr. Andrew Wachira.

Respondent's Case

58. In its memorandum of reply filed on 18th April 2011, the Respondent admits that the Claimant was its employee and at the time of termination earned a gross salary of Kshs.292,593/=. A pay slip was attached thereof and produced as 'NSE 1'.

59. The Disciplinary process meted on the Claimant and set out herein before is admitted by the Respondent.

60. The Respondent avers that the process was properly conducted and the Claimant failed to sufficiently answer the allegations made against her. The suspension was done by the CEO who implements the decisions of the Board and sits in the Board.

61. That the Respondent is regulated by CMA and the CMA directed the Respondent on 6th April 2009 to suspend the employment of the Claimant pending Investigations into her conduct by NSE.

62. The instructions given by the CMA to NSE dated 6th April 2009 were produced as exhibit NSE3 to the Response.

63. The Board of Directors of NSE approved the suspension. The disciplinary process was conducted in terms of the Human Resource Manual in place at the time.

64. That the investigations found that the Claimant's activities at Nyaga Stock Broker Limited were suspicious and smacked of insider trading; that the Claimant had issued bouncing cheques which was a criminal offence and was in contravention of the Human Resource Manual Section 11.3.2.(iv).
65. That the disciplinary process was above board and all necessary documentations were availed the Claimant to enable her defend herself.
66. That these investigations were not based on PWC Forensic Audit Report but on Independent Investigations by NSE.
67. That no prejudice was occasioned the Claimant in the disciplinary process by virtue of not having received the entire PWC Forensic Audit Report as the Claimant alleges or at all.
68. The Respondent submits that the termination of the employment of the Claimant was for a valid reason and was effected in accordance with a fair procedure.
69. That the disciplinary committee was, mandated and had authority to carry out the disciplinary process and denies the allegations by the Claimant to the contrary.
70. That the outcome of the disciplinary process was availed to the Claimant.
71. The Respondent submits that the termination was lawful and just taking all the circumstances of the case into account and the procedure followed was fair and above board.
72. **Issues for determination**

(i) Was the termination of the employment of the Claimant for a valid and just reason?

(ii) If the answer to (i) is in the affirmative was the termination done in terms of a fair procedure?

(iii) What remedies if at all are available to the Claimant?

Determination

73. A careful consideration of the case presented by the Claimant vis a vis that presented by the Court to the Respondent has led the Court to the following conclusion of law and fact;
74. That the staff regulations comprising of the Human Resource Policy Manual and the Code of Ethics were approved on 28th November 2007 and communicated to all staff by one Andrew Wachira.
75. That the Claimant holding the position of Head of Trading and Surveillance was in a Senior Management position and was aware of these regulations at all material times.
76. The disciplinary process was overtaken by the fact of abolition of the position held by the Claimant and the Respondent lost opportunity of terminating the employment of the Claimant otherwise except by declaring her redundant by the fact of abolition of office.
77. **(ii) Was the termination done in terms of a fair procedure?**

Prior to the conclusion of the disciplinary process, the Respondent

- a) placed the Claimant on suspension from 20th May 2009 to the date of termination on 29th April 2010. The Claimant remained under suspension for a period of eleven (11) months on half pay in breach of regulation 11.7 of the NSE Human Resource Manual which provides that

a manager shall be suspended on full pay pending determination of disciplinary matter by the Board in terms of Clause 11.2.(iii)

The period of suspension was inordinately long and was unfair as it kept the Claimant in limbo and anxiety for unreasonable period. This practice is to be discouraged at any workplace and staff regulations ought to place reasonable time limits within which disciplinary process should be concluded. The NSE HR Manual did not provide for such time limit.

b) On 8th March 2010, prior to the termination of the Claimant from the position of Head of Trading and Surveillance, the Board of NSE abolished the said position.

78. This was confirmed to the Claimant via a letter dated 8th March 2010. Therefore as at the time the CEO wrote the letter dated 29th April 2010, terminating the employment of the Claimant, the position she held did not exist in fact or in law. This termination was therefore incapable of implementation as the employment contract had been fundamentally breached due to operational reasons.

79. This double measure by the employer was irregular and not in terms of the HR manual in place at the time and amounted to an unfair termination procedure contrary to **Section 45(2)(c)** of the **Employment Act**.

80. As a matter of fact, the purported restatement of the Claimant to the position of Head of Trading and Surveillance following a Court order by a letter dated 3rd May 2010 was pretentious on the part of the Respondent and was not in good faith. No wonder the reinstatement was followed by an immediate instruction to the Claimant to take 23 days leave.

81. The fact of the matter is that the position held by the Claimant had ceased to exist before the disciplinary process had been concluded and the process ought to have been stopped immediately to avoid double jeopardy of the Claimant which happened in this case, as she was unable to take the favourable exit package offered to her and other staff at the time while the disciplinary charges were hanging over her head. Accordingly the procedure followed by the Respondent in terminating the employment of the Claimant was unfair and contrary to **Section 43(1)** and **(2)** of the **Employment Act**.

Remedy

82. In view of the foregoing, the employment of the Claimant was curtailed by fact of abolition of the position she held and is entitled to payment of terminal benefits in terms of **Section 40** of the employment Act and the voluntary Exit Package offered to the Claimant and other affected staff as at the 9th March 2010.

83. Accordingly the purported termination of the Claimant was not for a valid reason and was not done in terms of a fair procedure.

84. The Claimant is to receive a certificate of service reflecting this reality and not otherwise.

85. In view of the foregoing, the Claimant is entitled to;

Payment of half salary which was unpaid for the entire period of suspension from June 2009 to April 2010 in the sum of Kshs.1,609,206/=;

86. Payment of the redundancy package offered to all the affected staff and contained in Appendix 65 to the statement of claim in terms of **Section 40** of the **Employment Act**, following abolition of the position of the Head of Trading and Surveillance and introduction of the new structure as follows;

(i) Severance pay at fifteen (15) days Basic salary for each completed year of service in the sum of $(18 \times 292, 593.87 \times \frac{1}{2}) = 2,331,344.83$;

(ii) one month salary in lieu of notice in the sum of Kshs.292,593.87/=;

(iii) payment of the unpaid provident fund at 10% of the basic salary during the period of the suspension in the sum of Kshs.160,927/=.

87. Taking all the circumstances of this case into account especially the very long service the Claimant had given the Respondent; her acknowledged excellent performance during this period; the tribulations she underwent at the hands of her employer, her willingness to be reinstated to her position; the tarnishing of her reputation through the media and failure to give the Claimant a certificate of service to date, the Respondent is to pay compensation to the Claimant equivalent to ten (10) months' salary being compensation for the unlawful and unfair termination of employment in the sum of Kshs.2,925,938.70.

Total award Kshs.7,622,010.40.

(v) The decretal sum is to be paid with interest at Court rates from date of judgment to payment in full.

(vi) Costs of the suit.

Dated and Delivered at Nairobi this 31st day of October, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE