

Muthee v Italiana (Cause 2244 of 2015) [2023] KEELRC 1825 (KLR) (28 July 2023) (Judgment)

Neutral citation: [2023] KEELRC 1825 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2244 OF 2015

J RIKA, J

JULY 28, 2023

BETWEEN

MARK MBAU MUTHEE CLAIMANT

AND

RAI RADIO TELEVISIONE ITALIANA RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 15th December 2015.
2. He states that he was employed by the Respondent media house as a Cameraman / Editor / Producer, in November 2010.
3. He worked on periodic contracts, which he states, were always renewed. The latest was dated 6th January 2015.
4. He last earned a monthly salary of Kshs. 306,495.
5. The Respondent did not notify Employees whether their contracts would be renewed. Employees worked past their contract's expiry dates. The contracts would be renewed, well past the expiry date.
6. The Claimant states that he was issued a letter of termination of employment, on 29th July 2015. He was not given reason or notice. He was told that the Respondent did not intend to renew his contract.
7. His position is that his contract was constructively renewed. This had been the practice for over 5 years. He legitimately expected renewal, after his last contract expired on 29th July 2015.
8. He had worked for 5 years, without any complaints from the Respondent about his competence and integrity.
9. He was not heard. Termination was against the *Employment Act* 2007 and *the Constitution*.
10. He prays for Judgment against the Respondent for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. 1-month salary in lieu of notice at Kshs. 306,495.



- c. Annual leave from 2010 to 2015 at Kshs. 1,532,247.
 - d. Paternity leave for the year 2012 when the Claimant's daughter was born, at Kshs. 153,247.
 - e. 12 months' salary in compensation for unfair termination at Kshs. 3,677, 940.
 - f. Overtime at Kshs. 610,236.
 - g. Severance pay at Kshs. 766,237.
Total...Kshs. 7,046,531.
 - h. Costs.
 - i. Interest.
 - j. Any other relief the Court may deem fit to grant.
11. The Respondent filed its Statement of Response on 22nd January 2016. It concedes to have employed the Claimant. His last operative contract was dated 26th January 2015, to terminate on 30th June 2015.
 12. The Respondent was not under any obligation to renew any of the successive contracts. It did not have any obligation to notify the Claimant of its intention to renew the contract. The contract was not constructively renewed. The Respondent did not terminate the Claimant's contract unfairly and unlawfully; the contract expired through effluxion of time.
 13. The Respondent denies that the Claimant had any legitimate expectation of renewal. The Claimant was at all material times, aware of the expiry date, 30th June 2015. The Respondent did not in any way violate the Employment Act and the Constitution. The Claimant does not merit the prayers sought.
 14. In any event, the Respondent avers that the Claimant had been charged with theft of the Respondent's property before his contract expired. The Respondent lost trust and confidence in the Claimant, and could not have been expected to renew his contract. The Respondent prays the Court to dismiss the Claim with costs.
 15. The Claimant initially gave evidence ex parte, and closed his case, on 26th November 2020. Ex-parte proceedings were set aside through a Ruling of the Court, delivered on 22nd July 2021.
 16. The Claimant was heard afresh, on 26th January 2022 and 4th October 2022, when he closed his case. The Respondent's case was reserved for hearing on 9th December 2022, when Parties informed the Court that they were exploring voluntary settlement, and needed more time. The Respondent's case was rescheduled for hearing on 2nd February 2023. The Respondent's Advocate informed the Court on 2nd February 2023, that the Respondent was not able to secure the attendance of its Witness, a resident of Italy. Hearing closed on 2nd February 2023. The Claim was last mentioned on 24th March 2023, when Parties confirmed filing and exchange of their Final Submissions.
 17. The Claimant adopted his Witness Statement, dated 15th December 2015. He filed several bundles of documents, which were consolidated into one bundle, dated 20th November 2020. The documents were exhibited as 1-11, running from page 1 to 277.
 18. He was informed that his contract had expired, and would not be renewed. His last contract expired on 30th June 2015. The letter of termination came after expiry of the contract, on 29th July 2015.
 19. He first worked from October 2010, without a written contract. He was issued the first written contract effective 1st January 2011. He was a Cameraman/Editor/ Producer.



20. He was entitled to 22 excess hours weekly. He worked from 9.30 a.m. to 6.00 p.m. His overtime was never paid. He was entitled to annual leave of 30 days. He never took leave. He was entitled to medical cover for himself and family. He was entitled to 2 months' salary in lieu of notice.
21. He was issued several fixed-term contracts between 2011 and 2015. He would continue working, even after one contract had expired, before a subsequent contract issued.
22. He executed a contract covering the period 1st October 2012, to 31st October 2012. The next contract he executed was on 31st July 2014.
23. Between 31st October 2012 and 31st July 2014, the Claimant worked without a written contract. He worked in continuity, on the same salary and other terms and conditions of service.
24. He was entitled to paternity leave of 2 weeks. He never went on this leave when his daughter was born. Page 217 of his bundle of documents, is the birth notification. He requested for paternity leave, which was denied.
25. The last contract was to run from 5th January 2015 to 30th June 2015. He continued to work, until 29th July 2015.
26. The Claimant worked overtime, as shown in his consolidated documents, page 33-44. The chart captures days worked on weekends and normal days. Page 36 shows a story filed by the Claimant. He is shown to have left office at 8 minutes to 9.00 p.m. Page 45 records the Respondent's Head Office to have received the Claimant's story. The time the story was submitted is shown.
27. Tax Returns at pages 228 – 232 of the Claimant's documents confirm that the Claimant was an Employee of the Respondent. They relate to the year 2013, when the Claimant worked without any written contract. There are Tax Returns for 2014, and October-December 2010 confirming employment. The Respondent's Tax Auditors prepared the Returns, and forwarded the Returns to the Claimant, as shown
28. The Claimant was charged with theft of the Respondent's cash, in the sum of Kshs. 109,000, at Kibera Law Courts, Nairobi. The charge was amended later, to incorporate the Claimant's wife as a co-accused. The Respondent's Head of Bureau at Nairobi, and Claimant's boss, Vincenzo Nucci, was a Witness in the criminal proceedings. At page 16 of the proceedings, he states " I dismissed Mark [Claimant] at the end of June. He continued to work for 27 days... I dismissed him, because he was arrested."
29. The Claimant told the Court that he was acquitted on 9th January 2021, with no case to answer, and there was no justification therefore, in dismissing him based on the criminal charge.
30. The Respondent's own evidence was that the Claimant was dismissed on account of the criminal charge. It is not correct to allege that termination was on account of effluxion of time.
31. Cross-examined, the Claimant told the Court that he started working in 2010 until December 2010, without a written contract.
32. He signed a contract for 1 year, in January 2011. There were other contracts executed subsequently. The last expired in June, 2015.
33. His role was defined by the respective contracts. The terms and conditions of service were similar. The last contract commenced on 1st January 2015, and expired on 30th June 2015. The contract provided for 30 days of annual leave; per diem; and written notice of 30 days. The terms of each contract applied for a specified period. The Claimant read and understood each contract.



34. He claims leave over the whole period of service. He did not claim annual leave, before executing any fresh contract. He did not think it necessary, because he was continuing in employment. He was the only Cameraman for the Respondent, in the whole African continent. His work was quite engaging. He claims per diem as overtime allowance. He did not demand for this, before renewal of any contract. He similarly did not write to the Respondent, demanding pay in lieu of paternity leave, before executing a fresh contract.
35. He received the letter of termination. He was told there would be no renewal. He was advised that the contract had expired. The letter was undated, but was received by the Claimant, on 29th July 2015. He had already been charged with the criminal offence of theft. He was charged on 21st July 2015. The letter reached him 8 days later. His contract expired on 30th June 2015. All previous contracts were renewed. There was no automatic renewal. It was unreasonable for the Respondent to decline renewal.
36. Redirected, the Claimant told the Court that he was not given an opportunity to explain himself. He was charged on 21st July 2015. He continued working even after the charges, until 29th July 2015. The Court acquitted him, in the criminal proceedings. He legitimately expected renewal. He had been allowed to continue working even after his contracts expired. He was not granted annual leave or paid in lieu thereof. He did not demand to go on leave, because of the intensity of his work. He did not waive his right to any benefit. The Respondent was aware about the birth of the Claimant's daughter. There was no contract in force, at the time of dismissal.
37. The Respondent as stated above, did not call any Witness.
38. The Claimant relies on the Court's decision in *Mary Chemweno Kiptui v. Kenya Pipeline Company Limited* [2014] e-KLR, which held that the Employer must prove the reason or reasons for termination, failing which termination is deemed unfair. He also cites *Zablon Bisonga Mose v. Rela Careers Limited* [2018] e-KLR, and *Caliph O. Ogega v. National Social Security Fund*, Cause 280 of 2013, which emphasize the right of an Employee to fair procedure, under Sections 41 and 45 of the *Employment Act*, 2007. He cites the decision of the Court in *Paul Juma Okina v. First Assurance Company Limited* [2017] e-KLR, in urging the Court to find that he merits severance pay.
39. The Respondent relies on a List of no less than 24 Authorities. The Court does think that it is necessary to cite all the decisions. They include: *Kenya Ports Authority v. Modern Holding E.A. Limited* [2016] e-KLR, restating that jurisdiction is everything; *Elias Kibathi & Another v. the Attorney-General* [2021] e-KLR, holding that Section 90 of the *Employment Act* places a limitation of 3 years, on actions founded on contract of employment; *Bernard Wanjohi Muriuki v. Kirinyaga Water & Sanitation Company Limited & Another*, E&LRC Cause No. 1541 of 2010, and Court of Appeal decision in *Trocaire v. Catherine Wambui Karuno* [2018] e-KLR, holding that once a fixed-term contract expires, there is no obligation on the part of the Employer, to give reasons why the contract should not be renewed.
40. The issues are: whether the Claimant reasonably expected renewal of his contract after 30th June 2015; whether his contract was terminated by the Respondent at all, or unfairly and unlawfully; whether he is entitled to the prayers sought.

The Court Finds: -

41. A. Reasonable expectation of renewal. The Claimant was employed by the Claimant as a Cameraman/ Editor/ Producer. He states at paragraph 3 of his Statement of Claimant that he was employed first, through an oral contract, in November 2010.



42. Between 1st January 2011 and 30th June 2015, he was placed on multiple written, fixed-term contracts. Among them, in order of their respective dates, are: -
- I. 1st January 2011 to 31st December 2011 [1 year].
 - II. 1st January 2012 to 31st January 2012 [30 days].
 - III. 1st March 2012 to 31st March 2012 [30 days].
 - IV. 1st April 2012 to 30th April 2012 [30 days].
 - V. 1st May 2012 to 30th May 2012 [30 days].
 - VI. 1st June 2012 to 30th September 2012 [3 months]
 - VII. 1st October 2012 to 31st December 2012 [3 months].
 - VIII. 1st July 2014 to 31st December 2014 [6 months]
 - IX. 1st January 2015 to 30th June 2015 [6 months]
43. There were 9 contracts, covering a period of 5 years.
44. There was no break in service. Even when one contract expired, the Claimant went on working on pre-existing terms and conditions of service. He went on working as if nothing had happened. Between 31st December 2012 and 1st July 2014, a period of 1 ½ years, he continued to work without a written contract.
45. He did the same work of a Cameraman/ Editor / Producer. He told the court that he was the only Cameraman in Africa, for the Italian media house, Rai Radio Televisione Italiana, the Respondent herein. He worked in continuity, without interruption during his 5 years of service.
46. Even after the Claimant's last contract expired on 30th June 2015, he went on working.
47. He was charged with the offence of theft upon a complaint lodged with the Police by the Respondent, in Chief Magistrate's Criminal Case Number 3022 of 2015 at Nairobi.
48. His boss and Head of Bureau at Nairobi, Vincenzo Nucci, told the Criminal Court that the Claimant continued to work, 27 days after his contract ended. He further stated that he intended to 'reconfirm' the Claimant. The Court understood Vincenzo to mean that, the Respondent intended to renew the Claimant's contract, were it not for the criminal charge.
49. Where an Employee has been employed on fixed-term contracts for many years, and each contract is unfailingly renewed at the option of the Employer, one after the other, the Employee would be entitled to reasonably expect renewal.
50. Where the Employee has gone working beyond the expected date of expiry, he would be entitled to reasonably expect renewal.
51. In this dispute, the Claimant initially worked for about 3 months under an oral contract. He was offered 9 fixed-term contracts stretching over a 5-year period. Each contract was renewed, except the last one expiring 30th June 2015. When a contract was not immediately renewed on expiry, the Claimant went on working under the previous terms and conditions of service. He was unperturbed by the lack of a written contract between 2012 and 2014, because he reasonably expected renewal at some point in time. If a contract has been renewed on 9 consecutive occasions, with the Employee discharging



- a function which is core to the Employer's business in continuity for over 5 years, why should the Employee not reasonably expect renewal on the 10th occasion?
52. The Respondent is a media house, and the role of Cameraman/ Editor/ Producer, is a core function of the business of any media house. It is a role any reasonable person would expect, is discharged as it was by the Claimant, in continuity.
 53. The *Employment Act* does not encourage temporary employment contracts in perpetuity. The Respondent opted to place the Claimant in periodic contracts, some for as short as 1 month, which in the view of the Court was tantamount to casualization of labour.
 54. These type of contracts offer no security to Employees, such as pension, service pay based on creditable years of service, and the statutory protections available to regular Employees on termination of employment. The Employer can always float the argument, that the contract was term-limited, and expired as was intended by the Parties.
 55. It is not forbidden to roll over a contract, when a fixed-term term has expired. It is not against the law to renew an expired contract once or twice upon expiry, and perhaps decline renewal of the third occasion. It is questionable when an expired contract is renewed on 9 occasions, and renewal declined on the 10th occasion, for no other reason, other than that it has expired.
 56. The Employee develops a right to reasonably expect renewal, after the last expiry, where renewal has been granted multiple times in the past.
 57. The decisions cited by the Parties on reasonable expectation of renewal, which the Court has carefully considered, all appear to suggest that whereas the general principle is that there is no automatic expectation of renewal, the presence of such expectation can be established by the facts of each case. The Courts must examine the facts and circumstances of each case, in determining if there is reasonable expectation of renewal.
 58. In *Margaret A. Ochieng' v. National Water Conservation & Pipeline Corporation* [2014] e-KLR, this Court observed the above principle. It was noted that while the general rule, is that fixed-term contracts carry no inherent expectancy of renewal, evidence may be presented by the Parties, imposing an obligation on the Employer, to renew. The Court amplified the principle above, citing a decision of the UN Appeals Tribunal [UNAT], Case No. 2010-125, between *Frenchon v. The Secretary- General of the United Nations*, where it was held that, the decision of an Employer not to renew a fixed-term contract may be challenged on limited grounds: where the actions of the Employer, give rise to reasonable expectation of renewal, on the part of the Employee; where the decision not to renew is based on improper motives; or where there are countervailing circumstances.
 59. There is in the view of the Court, need for legislative intervention, on the law relating to legitimate and reasonable expectation of renewal of fixed-term contracts of employment, such as is contained in Section 186 [1] [b] of the South African *Labour Relations Act*. One of the definitions of the term 'dismissal' in South African law, is where an Employee reasonably expected the Employer to renew a fixed-term contract of employment, on the same or similar terms, but the Employer offered renewal on inferior terms, or declined to renew at all. It is necessary that the *Employment Act* 2007 is amended to expressly state, that failure to renew a fixed-term contract, in such limited circumstances as identified in the *Achieng'* / *Frenchon* decisions above, may be deemed to amount to unfair termination.
 60. The purpose of such legislative intervention, is to give succour to the constitutional concept of fair labour practices. An Employee who works under 9 fixed-terms contracts, over 5 years, and is refused renewal on the 10th occasion, is most likely, a victim of unfair labour practice. The absence of the



equivalent of Section 186 [1] [b] of the South African Relations Act, in our *Employment Act*, exposes Employees such as the Claimant herein, to unfair labour practices.

61. The absence of such a provision equivalent to the South African law, in the *Employment Act*, is nonetheless, mitigated by Section 45 [5] [d] of the *Employment Act*. This law mandates the Court, in deciding whether it was just and equitable to terminate the employment of an Employee, to consider the previous practice of the Employer in dealing with the types of circumstances, which led to termination. Expiry of a fixed-term contract is termination of employment, by effluxion of time. A review of such circumstances, would include considering whether fixed-term contract has in the past unfailingly been renewed; and whether the Employer permitted the Employee to continue working, as if nothing had happened, after any one contract expired. Previous practice is represented in this case by 9 contracts which were invariably renewed by the Respondent, for 5 continuous years. The Respondent allowed the Claimant to continue working beyond 30th June 2015, and from 2012-2014, without any written contract. Previous practice is an important factor, in determining whether the Respondent acted justly, equitably and fairly in not renewing the Claimant's contract, and in dismissing him. It is an important factor is establishing the reasonable expectation of the Claimant on renewal. The Court must always look at evidence of previous practice of the Employer carefully, and avoid hasty and generalized conclusion, that fixed-term contracts carry no expectancy of renewal.
62. The Court is satisfied that the Claimant reasonably expected his contract would be renewed after 30th June 2015.
63. B. Termination. There are 2 letters from the Respondent to the Claimant on the subject of termination.
64. The first is undated, and is referenced 'termination,' and reads: -

"As you are aware, your contract of employment expired on 30th June 2015, and we were in the process of considering whether to renew it. Having now considered the issue of renewal, and bearing in mind all the circumstances, we regret to inform you that we are unable to extend your contract. Kindly return all the property belonging to Rai Radio Televisione Italiana to the company with immediate effect." The letter is signed by Vincenzo Nucci, Bureau Head.
65. This letter is undated, but refers to the Claimant's contract having expired on 30th June 2015, and confirms also that the Claimant was in employment, after expiry.
66. The second letter, also from Vincenzo Nucci, referenced 'dismissal,' states: -

"Afternoon Mark. This is to give you the dismissal letter dates, whereby I forgot to include the same I gave my assistant to give you. I personally handled [sic] the letter you to my assistant Mary Njoroge on 27th July 2015 and forgot to include the dates since I was in a hurry to the airport, as far as am concerned you received the dismissal letter today and requested the dates. Hoping everything is clear now, and keep this letter for any other references in the future."
67. The first letter is referenced 'termination,' while the second letter clearly states that what the Respondent was communicating to the Claimant was a dismissal decision.
68. The actual reason why the Claimant left employment was not that his contract expired, and was not renewed; it was on account of a dismissal decision made by Vincenzo Nucci.



69. The dismissal letter is strongly supported by the evidence of Vincenzo Nucci, recorded in the criminal trial, where he states that “...on completion of investigations, I dismissed him. I dismissed him because he was charged and everything shows he was culpable...” The Claimant left employment on dismissal, rather than on expiry of his contract of employment.
70. Dismissal is a disciplinary measure, while expiry of a fixed-term contract refers to termination of the contract through effluxion of time. The Respondent made it clear in its letter dated 29th July 2015, and in the evidence of Vincenzo Nucci before at the criminal proceedings, that the Claimant was dismissed on disciplinary grounds.
71. The reason cited by the Respondent, in justifying dismissal, was that the Claimant was charged with a criminal offence, and that investigations showed he was culpable.
72. Against this background, the Respondent cannot escape the requirements of the law, under Sections 41, 43, 45 and 47 of the *Employment Act*. It must be shown that dismissal was based on fair and valid reason; and that fair procedure was followed.
73. The Respondent did not discharge the substantive and procedural obligations under the *Employment Act* 2007. The argument that the contract expired is countered, by the fact that there was reasonable expectation of renewal. The Claimant had renewals over the past 5 years, and on about 9 occasions. There was a letter, and oral evidence from Vincenzo Nucci, stating unequivocally, that the Claimant was dismissed, on the ground that he was charged before the Criminal Court, and that investigations showed he was culpable. Vincenzo Nucci was referring to Police Investigations, notwithstanding that the criminal process was at its infancy. The criminal proceedings ended in the acquittal of the Claimant, discounting the Respondent’s position on the culpability of the Claimant on matters subject of criminal investigations.
74. The reason for dismissal, that the Claimant was charged in the criminal proceedings, was not a valid and fair reason. Being charged in a criminal case did not justify dismissal. The Respondent had the obligation to convene disciplinary proceedings, and establish that the Claimant was guilty of an employment offence. The Respondent opted to give alternative reasons – expiry of fixed term contract and institution of criminal proceedings against the Claimant- none of which was shown to amount to fair and valid reason under the *Employment Act*.
75. The contract was terminated by the Respondent unfairly and unlawfully.
76. The Respondent at the end of the day, opted not to give evidence, and there is no evidence to support the Pleadings and Submissions filed by the Respondent, to the effect that the Claimant left on expiry of his fixed term contract, rather than upon dismissal by the Respondent.
77. C. Remedies. It is declared that non-renewal and termination of the Claimant’s contract was unfair and unlawful.
78. The Claimant is granted the prayer for 1-month salary in lieu of notice, at Kshs. 306,495.
79. The Respondent did not grant the Claimant annual leave, under any of the consecutive contracts. As the Court has made a finding that service was in continuity, over a period of years, and the Claimant continued to work even while he did not have a written contract, it is proper to look at his benefits cumulatively, over a period of 5 years, rather than peg such benefits to each contract, and question the Claimant as to why he did not pursue unpaid benefits, at the end of each contract. The answer he gave on this question during the hearing was adequate; that he considered himself to be working in continuity and did not think it necessary to pursue unpaid benefits at the lapse of each contract.



80. The Claimant left employment on 29th July 2015, and is entitled to claim accrued and cumulative benefits, over a period of 5 years of service.
81. Clause 7 of the contract dated 1st March 2011 and the last one dated 6th January 2015, state that the Claimant was entitled to 30 days of annual leave with full pay. The Claimant never went on leave. He was engaged throughout, as the only Cameraman for the Respondent in Africa. He is granted full annual leave for 2011, 2012, 2013 and 2014, and pro-rata leave over a period of 7 months worked in 2015, at Kshs. 1,403,747.
82. Section 29 [8] of the *Employment Act* grants male Employees 2 weeks of paternity leave with full pay. Some of the contracts executed by the Parties, provided for paternity leave in similar terms as the *Employment Act*. The Respondent cannot feign ignorance about the right of the Claimant to paternity leave. The Claimant was blessed with a baby girl, born at Aga Khan Hospital, on 30th January 2012. He supplied the notification of birth to the Respondent, but was not granted paternity leave. The Respondent has not adduced evidence, denying service or knowledge of the birth notification, or disputing that the Claimant applied for paternity leave. He is granted pay in lieu of paternity leave, equivalent of 14 days' salary at Kshs. 153,247.
83. Clause 4 of the last contract fixed the hours of work from 9.30 a.m. to 6.00 p.m. from Monday to Friday every week. If the Respondent required the services of the Claimant during such other hours, or day of the week as the Respondent deemed fit, the Claimant would be compelled to comply with the request. The Claimant states that he filed some stories past the contracted hours of work, but was not compensated. He claims overtime calculated at Kshs. 610,000.
84. The clause on hours of work does not state, that the Claimant would be paid for excess hours worked. It states that he would be requested to work excess time if necessary, and he was bound to comply. The Claimant did not provide the Court with an express clause in any of his contracts which provided for overtime pay. He did not avail to the Court the basis for his computation of overtime pay, and persuade the Court on which labour instrument, computation is based. He was paid a reasonable monthly salary, at Kshs. 306,495. Parties must have taken into account, that the Claimant would occasionally be called to work beyond the contracted hours, in keeping with his calling as a journalist. The prayer for overtime pay is declined.
85. There is similarly no evidence to support the prayer for severance pay. The Claimant did not leave employment under Section 40 of the *Employment Act*, to warrant severance pay.
86. He worked for 5 continuous years. The Respondent did not complain throughout the period, that the Claimant's performance was poor. He was entrusted coverage of the entire continent of Africa, as the lone Cameraman. He discharged other continuous roles, core to the Respondent's business. He reasonably expected to continue in service. He did not contribute to the circumstances leading to his dismissal. He told the Court that he was denied his terminal benefits. He had continued to work, even when written contracts expired, and expected to continue working indefinitely. His performance was not faulted. His discipline was not faulted. His contracts would not have been renewed repeatedly, against the background of poor performance and poor disciplinary record. He is granted equivalent of 10 months' gross salary in compensation for unfair termination at Kshs. 3,064,950.
87. Costs to the Claimant.
88. Interest allowed at court rate, from the date of Judgment till payment is made in full.



In Sum, It Is Ordered: -

- a. It is declared that non-renewal and termination of the Claimant's contract of employment was unfair and unlawful.
- b. The Respondent shall pay to the Claimant 1-month salary in lieu of notice at Kshs. 306,495; annual leave at Kshs. 1,403,747; paternity leave at Kshs. 153,247; and equivalent of 10 months' gross salary in compensation for unfair termination at Kshs. 3,064, 950 - total Kshs. 4,928,439.
- c. Costs to the Claimant.
- d. Interest granted at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT DIRECTIONS, 2020, THIS 28TH DAY OF JULY 2023.

**JAMES RIKA
JUDGE**

