



**Odhiambo v University of Nairobi Enterprises and Services Limited (Cause E497 of 2021) [2023] KEELRC 994 (KLR) (18 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 994 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E497 OF 2021  
NZIOKI WA MAKAU, J  
APRIL 18, 2023**

**BETWEEN**

**BURT AGGREY ODHIAMBO ..... CLAIMANT**

**AND**

**UNIVERSITY OF NAIROBI ENTERPRISES AND SERVICES  
LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim against the Respondent by a Memorandum of Claim dated 22<sup>nd</sup> June 2021. He avers that on 26<sup>th</sup> April 2012, he was employed by the Respondent as an Assistant Maintenance Officer for a period of 3 years at an initial gross salary of Kshs. 73,100/-, which terms were subject to the Respondent's Terms and Conditions. That his scale was also subject to an annual review based on performance. That he performed exceptionally well in his role and by a letter dated 1<sup>st</sup> July 2013, his terms including his monthly salary, grade and gratuity rate were reviewed upwards. In addition, on 4<sup>th</sup> March 2015 his employment was renewed for a further period of three (3) years with effect from 4<sup>th</sup> June 2015 to 3<sup>rd</sup> June 2018. That his exceptional performance led to his employment being further renewed on 7<sup>th</sup> May 2018 for a further three (3) years with other terms of the contract specified in the Respondent's Terms and Conditions of Service, specifically in the Respondent's Human Resources Manual dated 28<sup>th</sup> June 2016 (hereinafter "the Respondent's 2016 HR Manual").
2. It is the Claimant's averment that he had contractual expectations to have his contract renewed subject only to performance and therefore prior to expiry of his contract with the Respondent, he made a written request for renewal of his employment contract on 25<sup>th</sup> November 2020. That he did not receive any response until 27<sup>th</sup> April 2021 when the Respondent's Managing Director (MD) wrote to him communicating that his request for renewal of contract had been rejected and that the board guided on outsourcing Facilities Management as a cost containment measure. That on 30<sup>th</sup> April 2021, the Respondent proceeded to put him on compulsory leave for 11 days without any request for such



leave. The Claimant avers that he never had any performance issues and instead exhibited good results in the preceding appraisal reports. That he was therefore aggrieved by the decision to declare him redundant because no notices of the intended redundancy were issued to him and the local area labour office and there was no reasonable substantive justification for the redundancy process. Furthermore, the Respondent did not involve him in any consultations before declaring his position redundant and it also failed to utilize objective selection criteria. The Claimant avers that the Respondent terminated his contract unfairly on account of redundancy, which entitles him to maximum damages having worked for the Respondent without being subjected to any disciplinary action or performance issues for the entire duration of employment. That he is entitled to his outstanding 14 leave days as at the date he was declared redundant and that having worked for a period in excess of 9 years as at the date of redundancy, he is entitled to severance pay at the rate of 2 months' salary for every year worked. He also seeks to be paid salary in lieu of notice, day trip allowance of 14 days for working on two projects for the Respondent, a long service award, gratuity as per the existing terms and conditions of employment being 31% of the basic salary for the entire period. The Claimant prays for judgment against the Respondent for a declaration that the termination of his employment by the Respondent constitutes unfair, unlawful and wrongful termination. He further prays for payment of 12 months' salary compensation, the aforementioned dues plus interest at court rates, and costs and interests of the suit at court rates.

3. In reply, the Respondent filed a Memorandum of Response and Counterclaim dated 14<sup>th</sup> July 2021 averring that the relationship between it and the Claimant was a term contract with no expectation for automatic and or renewal, and that previous contractual relationships were distinct and separate in their own terms. That termination of the said employment relationship was as per the term contract and that parties accepted the termination notice and process save for want of legal clearance process on the part of the Claimant. It is the Respondent's averment that the Claimant's gratuity dues over the years were settled as per each contract term for each completed service term and that the claim for day trip allowances are not contractual and remunerative as alleged. That the term contract had no provision for long service employee award and that the claim for severance pay is not applicable in a fixed term contractual situation.
4. In relation to the clearing process, the Respondent avers that the Claimant has not adhered to the Respondent's staff exit clearance and release form whereas it is standard procedure to ensure that its real or personal properties are returned before an exiting staff is cleared. That the Claimant's refusal to undertake employee exit clearance and release form was thus a breach of his exit obligation terms. It particularises this breach as follows:
  - a. Failure to clear and return the Respondent's properties and items in his possession.
  - b. Failure to submit a handing over report to his immediate supervisor on all projects and programmes he was undertaking while in active employment of the Respondent.
  - c. Making malicious and false claims against the Respondent and its staff.
  - d. Abandoning workload and programmes under his jurisdiction without officially reporting to his immediate supervisor.
  - e. Failing to perform his duties with integrity and accountability.
  - f. Covering up his own failures, omissions and commission by alleging flagging of illegal transactions and practices of the Respondent's at the tail end of his term contract, while the alleged illegal transactions and practices were not raised early in his contract term.



- g. Lodging an unlawful, irregular and unfounded claim against the Respondent with a sole purpose of forcing a renewal of a term contract.
- h. Acting in bad faith, malice and rage when his term contract came to an end.
5. In the Counterclaim, the Respondent avers that the Claimant owes it Kshs. 4,500,000/- in respect to projects he failed to account for under his immediate supervision. It further avers that the Statement of Claim as drawn and filed by the Claimant discloses no reasonable cause of action and prays for it to be dismissed with costs. It further prays for its Counterclaim seeking Kshs. 4,500,000/- against the Claimant together with costs and interest be allowed.
6. The Respondent also filed a witness statement made by its Managing Director, Mr. Seith Odiwuor Abeka, who states that the Claimant was a term employee whose three (3) year contract ended on 4<sup>th</sup> June 2021 by automatic lapse of effluxion of time. That the Respondent served the Claimant with one month's notice and after expiry of his contract, he was informed to follow due process of clearing from the Respondent in line with the existing Human Resource Policy and Procedure Manual. He notes that the Claimant's purported clearance certificate on exit presented in court is partially filled or incomplete for want of handing over to the MD a report of the projects and programmes under him. He states that the Claimant ought to follow due process by clearing with the Respondent and being issued with an exit clearance certificate for his final dues to be processed. He further states that the Respondent also found out it had experienced a loss of Kshs. 4,500,000/- in consultancy projects while the Claimant was serving as the Company's Facilities Maintenance and Management Officer and the Claimant had negligently or recklessly failed and or ignored to account for the said sums of money.
7. The Claimant filed a Reply to the Memorandum of Response and defence to the Counterclaim dated 7<sup>th</sup> October 2021 denying he was served with a termination notice or that he was subjected to any process before termination. He avers that he was duly cleared as per the clearance form, he handed over all the reports to the Respondent and was issued with a clearance certificate and therefore denies that he refused to clear. He reiterates that the Respondent's Terms and Conditions of service provided for day trip allowances, long service award and all the other benefits he is seeking herein and denies the particulars of breach as alleged. The Claimant further denies that it owes the Respondent the Counterclaim amount of Kshs. 4,500,000/- and asserts that the Counterclaim which discloses no reasonable cause of action should be dismissed with costs.
8. The Claimant also filed his witness statement dated 7<sup>th</sup> October 2021 asserting that his salary was reviewed upwards from the initial salary of Kshs. 73,100/- to Kshs. 90,316/- in his contract dated 1<sup>st</sup> July 2013, to Kshs. 102,036/- in the contract dated 4<sup>th</sup> March 2015, and to Kshs. 109,450/- in the contract dated 7<sup>th</sup> May 2018. He states that he was unfairly and unlawfully terminated on account of redundancy without being subjected to any hearing, consultation, disciplinary or performance issues at all and that he did not receive any response on the appeal he lodged with both the Respondent's MD and the Board of the Respondent. That he proceeded to clear from the Respondent and requested for computation and payment of his terminal dues. However, while the process was underway, he received an email from the Respondent's MD unilaterally suspending processing of his dues until further notice. The Claimant contends that this was unfair and illegal because he had completed the clearance process and returned all assets of the Respondent, the suspension was done without authority and for an unknown and indefinite period, and no reason for the indefinite suspension was proffered.
9. The Claimant further states that on 26<sup>th</sup> May 2021, he handed over a comprehensive report to the MD and the Office Manager on directions of the MD and that upon request, also forwarded the same to the Respondent's Human Resource Department (pages 39-44 of the Claimant's Bundle of Documents).



He asserts that in his letter to the Vice Chancellor dated 12<sup>th</sup> May 2021, he had questioned the motive of the MD in terminating his services, part of which related to his whistleblowing on irregularities concerning the MD's office and then requested the Respondent to investigate the pilferage of a sum of Kshs. 4,500,000/-. That the MD was irked and instead of approving his clearance process, wrote him an email on 14<sup>th</sup> June 2021 saying that the Claimant's allegations were under investigations which process he should not prejudice and that they had suspended processing of his dues until further notice. It is the Claimant's assertion that the Respondent has buttressed his averment that Kshs. 4,500,000/- was indeed siphoned by the MD who now turns the blame on him for not accounting for the money as a revenge for his whistleblowing. That the MD's allegations are a clear afterthought and against the clear rule of estoppel as the Claimant has never been subjected to any disciplinary action or any investigations over any liability of the Respondent. That the MD's vendetta against him is laid bare by the depositions made in the MD's affidavit dated 22<sup>nd</sup> July 2021 that one of the conditions for processing and paying the Claimant's dues is that he must withdraw the claim.

10. In response, the Respondent filed a Reply and a further witness statement both dated 23<sup>rd</sup> November 2021. In the further statement, Mr. Abeka states that Claimant's performance during his contract periods was characterized by neglect of duty, non-performance, complaint from Respondent's customers, warning letters and show cause, which he also particularises. That the Claimant's continued reference to the Respondent's Human Resource Manual dated 28<sup>th</sup> June 2016 is in bad faith, misleading and has been overtaken by events as the State Corporations Advisory Committee approved the Respondent's obtaining Human Resource Policy & Procedure Manual dated 2<sup>nd</sup> July 2018 (hereinafter "the Respondent's 2018 HR Policy & Procedure Manual"). He asserts that the Respondent's Board is the only authority mandated to accept and or reject application for renewal of staff contract and that the Claimant's dues would only be payable to the Claimant after he had attended an exit interview, accounted for Respondent's missing items and cleared.

### **Claimant's Submissions**

11. The Claimant submits that paragraph 4.8 of the Respondent's 2016 HR Manual addressed the Tenure and Terms of Appointment which were applicable to him having executed the same on 18<sup>th</sup> January 2017. That paragraph 4.8(a) indeed provides that all appointments for three (3) years shall be renewable subject to an employee's request for a contract renewal and level of their performance. That the said terms were directly incorporated into his employment contract in the subsequent letter of renewal dated 7<sup>th</sup> May 2018. He submits that there neither existed no amendment to these terms at all nor has the Respondent demonstrated to the Court at any given time that there existed any variation or amendment to paragraph 4.8(a) of its 2016 HR Manual. That therefore the expectation brought about by the said provision existed until termination of his employment contract. In depth, that the Respondent has not shown that the alleged 2018 HR Policy & Procedure Manual negatively affected the terms and expectations created by paragraph 4.8(a) of the Respondent's 2016 HR Manual, which it in fact utilized to consider the renewal of contracts of its employees in 2021.
12. He submits that furthermore, the Respondent only annexed pages 62-65 and omitted pages 1-61 and pages 66-75 of its 2018 HR Policy Manual when it was incumbent upon it to file the entire copy of the Manual. That the Respondent cannot file a paltry seven (7) pages of the Policy and then seek to convince the court that the said seven pages are enough to resolve the issues herein. The Claimant notes that there is neither evidence that the Respondent's 2018 HR Policy & Procedure Manual was brought to the attention of the Respondent's employees for their signing nor evidence of its approval by State Corporation Advisory Committee (SCAC) as alleged. He submits that Courts have been clear that knowledge by employees of the existence of the human resource manual is relevant to determine whether any revision of a manual is operative and binds or forms part and parcel of the



employee's terms. That a manual prepared and hidden by the employer cannot be said to have in any way overridden the manual that was brought to the attention of the employees and directly signed by the employees.

13. It is the Claimant's submission that his legitimate expectation to have his contract renewed was not based on mere hope or wish but rooted in the very contract of employment. That the Respondent made it clear in the contract of employment, the conditions attendant to renewal and thus created contractual expectations on his part. The Claimant cites the case of *Teresa Carlo Omondi v Transparency International - Kenya* [2017] eKLR in which this court expressed itself as follows:

“...It must be shown that the Employer, through regular practice, or through an express promise, leads the Employee to legitimately expect there would be renewal. The expectation becomes legally protected, and ought not to be ignored by the Employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire or hope. It is a principle based on a right, grounded on the larger principles of reasonableness and fair dealing between Employers and Employees...

The Court is satisfied the Claimant had legitimate expectation her contract would be renewed. There was a promise for renewal, subject to fulfilment of certain conditions. These conditions were fulfilled. The Claimant performed satisfactorily. She was appointed as an Independent Consultant for a key partner. There is no doubt her services were still required by the Respondent.”

14. The Claimant further submits that by the Respondent stepping out of the agreed contractual parameters and utilizing extraneous considerations unknown to him without giving him a hearing, amounted to unfairly terminating his employment. Furthermore, the failure to renew his employment was not for any valid reasons at all. This is so because from the Respondent's communication of 27<sup>th</sup> April 2021, his position was to be outsourced thus rendering him redundant whereas the Board Minutes of the Respondent alludes to the issue of costs and allegations that he had not 'convinced' them that he could shoulder the costs of his position. He submits that the Respondent's witness confirmed during his cross-examination that there was no outsourcing of the Facilities Department which continued to operate and further testified that an employee named Mr. Collins Kahonga had taken over the Claimant's position. That evidently, the witness confirmed that the reason of outsourcing the Facilities Department as advanced by the Respondent was an invalid reason. In the end, the Claimant submits that clearly the reason advanced for terminating his contract was owing to the operational requirements of the Respondent, which in effect amounts to redundancy.
15. It is submitted by the Claimant that the overarching provision that governed the clearance process was paragraph 9.2(e) of the Respondent's Human Resource Management Manual providing that, 'payment of terminal dues shall be subject to clearance of the staff concerned from all liabilities to UNES'. That indeed using the prescribed clearance form as advised and which he has produced in court (pages 32-34 of Claimant's Bundle of Documents), he commenced the clearance process and by 7<sup>th</sup> June 2021, he was duly cleared from all the relevant departments including the MD's office before he subsequently exited the service of the Respondent. That it is important to note that the clearance was returned with NIL liability on the part of the Claimant which return ought to follow payment of terminal benefits. Furthermore, the Respondent has not denied or disputed the contents of the reports he handed over as instructed, demonstrating that he indeed fulfilled all his contractual obligations to clear with it. He submits that the Respondent however refused to compute and remit his terminal dues only because he whistle-blowed the conduct of the MD's office in accordance with the Whistleblowing Policy.



16. Regarding the Respondent's claim for an exit interview, the Claimant submits that from the reading of paragraph 3.5 of the 2016 HR Manual, an exit interview is conducted to gain an understanding of the conditions and reasons that may have caused the employee, who voluntarily resigns from the establishment, to leave. That in this instance, his contract was terminated by reasons proffered by the Respondent and there was hence no need for an exit interview as designed by the Respondent. That while it is the Respondent who is required to conduct the exit interview for exiting key staff, it has not availed any evidence of any invite made to the Claimant to have the exit interview done. That in any case, an exit interview has no financial liability attached to it and there is thus no correlation between conduct of exit interviews and payment of terminal dues.
17. The Claimant submits that for his prayer for outstanding gratuity, the contents of his last contract letter dated 7<sup>th</sup> May 2018 indicated that he was entitled to Service Gratuity at the rate of 31% of the basic salary which he urges this Court to allow. For the prayer for outstanding leave days, he submits that the Respondent has not availed before this Court his leave records to challenge his claim for 14 outstanding leave days. In support of this proposition, the Claimant relies on the case of *Geoffrey Kariuki Mwaniki v Managing Director Nanak Trucking Co. Ltd* [2013] eKLR where the court held that the burden of rebuttal on an employee's allegation that they were not granted leave shifts to the employer to show that the employee took leave by producing the records in terms of section 74(1)(f) of the Act, failure to which the court is entitled to make an adverse assumption that leave was not granted. For the day trip allowance, the Claimant refers the court to paragraph 8.4.7 of the 2016 HR Manual (page 21 of the Claimant's Bundle) which indicated that the allowance was issued to members of staff who travel outside their duty stations for more than 8 continuous hours. That in this regard, the Respondent has not denied that the Claimant indeed incurred 14 days working on the stated projects and which entitles him to Day Trip Allowance.
18. As regards the Respondent's Counterclaim set up against him, the Claimant submits that the Respondent has failed to provide evidence of the alleged loss of Kshs. 4,500,000/- it directly attributable to him and there is notably no breakdown of how the said sum is arrived at. That instead, the Respondent casually states that Kshs. 4,500,000/- is the total amount the Claimant has failed to account for in the projects that were under his immediate supervision. That section 107(1) (2) of the *Evidence Act* provides that he who alleges must prove the allegations and since it is the Respondent that has set out a counterclaim seeking to be paid the said sum, it had the legal and evidentiary burden to prove the Claimant's liability to pay the Kshs. 4,500,000/- but which they have so far failed to discharge.

### **Respondent's Submissions**

19. The Respondent submits that the Claimant was perhaps unapologetically optimistic that his contract would be renewed, but it was not and that the non-renewal of his contract was not the Respondent's fault. It relies on the Court of Appeal decision in the case of *Amatsi Water Services v Francis Shire Chachi* [2018] eKLR where the Court stated that a fixed term contract will terminate on the sun set date unless it is extended in the terms stated in the contract and that a court cannot rewrite the terms of the contract freely entered into between the parties. It also cites the cases of *Margaret A Ochieng v National Water Conservation & Pipeline Corporation* [2014] eKLR and *Bernard Wanjohi Muriuki v Kirinyaga Water & Sanitation Company Limited & another* [2012] eKLR where the respective courts held that an employee under a fixed term contract should not expect an automatic renewal and once there is a written contract, the court will seek to give meaning to such by giving ordinary meaning to its terms in determining any issue that may arise.
20. The Respondent submits further, that a fixed term contract carries no rights, obligations or expectations beyond the date of expiry and that there cannot therefore be a case of unfair termination



of employment where the employer does not renew a fixed term contract that has expired on its due date. On this submission it relies on the case of *Isaiab Makboha v Basco Products (K) Ltd* [2014] eKLR where the Court held that non-renewal of a fixed term contract does not form a basis for termination. That in the decision in *Stephen M. Kitbeka v Kevita International Limited* [2018] eKLR, the Court held that the claimant having been on a fixed term contract with an ascertained date of expiry, was not entitled to notice of termination. It is the Respondent's submission that the Claimant's prayers for salary in lieu of notice and 12 months' salary compensation do not thus arise.

21. The Respondent further submits that the Claimant did not adduce evidence to justify the existence of a legitimate expectation that his term contract would be renewed. That courts have also held severally that there is no legitimate expectation of renewal of the employment contract unless the employer has expressly communicated this to the employee. It cited the case of *Enid Nkirote Mukire v Kenya Yearbook Editorial Board* [2022] eKLR. It submits that in the instant case, there was no such express or implied communication to renew the Claimant's contract and that applying the doctrine of legitimate expectation to the circumstance inherent in the Claimant's case would be stretching the doctrine too far. It cited the case of *Martin Kurla Mwai v Shree Logic Management Consultants Limited* [2019] eKLR in support of this argument. It is the Respondent's submission that there was no legitimate expectation other than that the immediate contract would determine at the end of three years and on this submission, it relies on the case of *James Ang'awa Okeyo v Kenya Plant Health Inspectorate Services* [2021] eKLR.
22. Regarding the applicable HR Manual, the Respondent submits that during the trial, the Respondent's only witness, Mr. Seith Odiwuor Abeka, clarified that since the Claimant had signed the previous manual, he was not required to sign the new one as he had sufficient notice about the management prerogative to change the policy. That what is obtaining is the Respondent's 2018 HR Policy & Procedure Manual which the Claimant was aware of at the time of last renewal of his contract and that the Claimant has not denied it in any of his pleadings or documents. That the Claimant was subject to the Respondent's 2018 HR Policy & Procedure Manual after the policy change and his claim that his term contract was governed by the previous policy manual is not tenable and has no legal basis.
23. On the issue of exit interviews, the Respondent submits that both the old and new policies required exiting staff to subject themselves to an exist interview at paragraphs 3.5 and 13.12 respectively. That it was therefore mandatory for the Claimant to subject himself to an exit interview, which he never did, as confirmed during cross-examination. It is submitted by the Respondent that the Clearance Certificate produced by the Claimant is incomplete and questionable. That the same was not signed by the MD or CEO because the Claimant bypassed the filling and returning of various forms as required under paragraph 9.10(d) of the 2016 HR Manual and paragraph 13.1(iv) of the 2018 HR Policy & Procedure Manual. That evidently, the Claimant is yet to clear with the Respondent in line with both the old and new HR Manuals.
24. The Respondent submits that when the Claimant presented his renewal of contract request, the management and board could not renew his contract because of cost element. That the Claimant purposely refused to subject himself to performance appraisals during the 2018 period of service and could not justify to the management the cost of his contract renewal. That the Claimant was however not subjected to disciplinary proceedings because he was on a costed satisfactory performance term contract. It submits that the Claimant did not comply with section 6.1 of the Respondent's Whistle Blower Policy in flagging the alleged illegal transactions in the consultancy projects as he failed to include substantial reasonable grounds and support the allegations with evidence among other procedural requirements. That the alleged whistle blow was a non-starter and meant to settle scores against the Respondent MD when the Claimant's contract was not renewed.



25. The Respondent submits that as per the Claimant's document at page 31, he proceeded on leave and utilised all his leave days. That the prayer for outstanding day trip is not payable as the same is a special claim that must be specifically pleaded and proved and that allowing this claim will amount to unjust enrichment to the Claimant. That payment of long service award is not tenable as the Claimant had served for nine years and not ten years and that this was one of the reasons why the HR Policy had to be reviewed in 2018. That severance pay had also outlived its purpose and removed by the Respondent's 2018 HR Policy & Procedure Manual while gratuity pay is dependent on the Claimant's clearance in accordance with the HR Policy.
26. Regarding the Counterclaim, the Respondent submits that section 13.0 of the Respondent's Whistle Blower Policy, the Claimant should be held to account for the malicious whistle blower incident, which justifies the Counterclaim. Further, under section 46 of the *Leadership and Integrity Act*, 2012, the Claimant should be held to account for the claims he made about the projects he was handling. The Respondent cites the case of *Daniel Mwanzau Nzioka v Brinks Security Services Limited* [2020] eKLR in which the Court ordered the claimant who did not fully clear with the employer to pay the counterclaim before payment of his terminal dues was made. That consequently, it is the Respondent's submission that this Court ought to consider the Counterclaim and set off of Kshs. 4,500,000/- against the Claimant before his terminal dues are processed, in addition to the Claimant attending an exist interview and handing over the Respondent's properties and items in his possession.
27. The Claimant sued his erstwhile employer asserting in part legitimate expectation for the non-renewal of his contract. The Respondent in reply filed a defence and counterclaim in which it raised a spurious claim for payment of money it allegedly lost in a project. The loss is traceable, from all accounts from a whistle blowing incident the Claimant made against the Managing Director of the Respondent. It is clear where the buck stops in relation to the loss. The Respondent should have looked at its management for the recovery it now seeks to impose on the Claimant. Were it not for the Claimant's efforts to bring this to its attention the Respondent would have been glad to look the other way. The Claimant was not entitled to an automatic renewal of the contract and as such despite having an expectation for renewal was not given one. However, the Respondent fell into grave error by declining to pay the Claimant his terminal dues. Whereas it is alleged there is a policy that applies – the 2018 HR policy, this was not brought to the attention of the Claimant and as such was a vain attempt to backtrack on contractual obligations the Claimant and fellow employees were entitled to. The Claimant is entitled to claim, as he did, for gratuity as this was provided for in the manual applicable being the 2016 HR manual. His clearance form was said not to be completed. The only person who did not sign is the recalcitrant MD who had beef with the employee and as such, not being a paragon of virtue, cannot now turn around and say the Claimant did not clear. Being biased and unprofessional cannot be a basis to deny an employee his right.
28. The upshot of the foregoing is sufficient to show that the Claimant is entitled to payment of his terminal dues. Despite the dismissal having been effected in a way that was not palatable to the Claimant, it did not detract from the fact that the Respondent had a right to reorganize its business. The Claimant therefore cannot properly press a claim for unfair or unlawful termination as he was taken through the process by the Respondent. In the final analysis I will order the Respondent to pay the Claimant his terminal dues which include gratuity as per his contract of employment since the 2018 HR procedures manual does not apply to the Claimant.
29. The tabulation of dues to be made and a report made to Court in the next 14 days after which the final figures will be entered in the judgment since the Respondent has to calculate the gratuity due in order to complete and finalize the termination commenced by the Respondent.



It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL 2023**

**NZIOKI WA MAKAU**

**JUDGE**

