

**ISSUES CONSIDERED AT NAKURU EMPLOYMENT AND LABOUR  
RELATIONS COURT IN RULINGS ON SUCCESSFUL INVOLUNTARY  
EMPLOYMENT TERMINATIONS, 2013-2020.**

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## DECLARATION


This project is my original work and has not been presented for a degree or any other award in any university or college

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This research project is submitted for examination with my approval as the university supervisor.

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## **DEDICATION**

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## **ABBREVIATIONS AND ACRONYMS.**

CGN	-	County Government of Nakuru.
CLA	-	Comparison Level of Alternative.
CL	-	Comparison Level.
ELRC	-	Employment and Labour Relations Court.
ELRCN	-	Employment and Labour Relations Court of Nakuru.
ILO	-	International Labour Organisation.
MOH	-	Ministry of Health.
NCPD	-	National Council for Population and Development.
RCT	-	Rational Choice Theory.
SET	-	Social Exchange Theory.
IET	-	Involuntary Employment Termination

## **ABSTRACT**

The objective of the research project was to identify the issues that were considered on successful involuntary employment terminations (IET) in Nakuru County from the year 2013 to 2020. The study sought to establish the issues considered in determination of successful involuntary employment terminations. Noted issues were revolving on summary dismissal, redundancy, restructuring, poor performance and physical incapacity as basis for successful involuntary employment terminations. The literature review anchored the research on the social exchange theory. Other important theories covered were; rational choice theory and conflict theory. The research was conducted by sampling online data from Kenya Law Reports repository. Determination of sample size was by use of Yamane sample size formula. The researcher randomly sampled 271 cases to investigate involuntary employment terminations which were successful. The sample was picked from the target population of 836 IET cases ruled at Nakuru employment and labour relations court for the study period by use of Microsoft Excel. Stratified random samples were derived; data was collected using data collection forms. Collected data was tallied, analyzed and presented in tables, figures, charts and percentages. Data was further statistically analysed by measures of central tendency to determine inherent relationships. The research found out that majority of IET cases were lodged by employees (99%) where employers succeeded in only 32% of them. Gross misconduct, redundancy and poor performance were outlined as the major issues considered and acknowledged by the Nakuru employment and labour relations court judges in determining success of an involuntary employment termination. This research complements the human resource theory with reliable literature on IET. Both employers and employees will find this study meaningful through insights on the issues that compromise their contractual relationships. In addition, the research has cited and suggested other additional areas for further research.

# CHAPTER ONE: INTRODUCTION

## 1.1 Background of the Study

Employment relationship exists between a hired individual and a master or entity (International Labour Organization [ILO], 2011). The employment engagement is for performance of a particular assignment or service for a predetermined period and consideration (ILO, 2011). The 2019 census showed the total population of Kenyans was 47.5 million (National Council for Population and Development [NCPD], 2020). In the same year, the informal and formal employment sectors had a population of 18.2 million employments (Faria, 2021). From these statistics, Kenya had 38.3% of the population in employment engagement in 2019. This group attracts attention of scholars, practitioners and government authorities to observe their behavior while in the employment engagement. Among the employed, formal sector accounted for approximately 17% and informal sector 83%.

Employment termination in any workforce is normally expected (Ministry of Health [MOH], 2020). Termination by employer needs to be well planned, coordinated and justified (MOH, 2020). In the general public domain, there are employer–employee cases and grievances on involuntary terminations of employment. The employment termination disputes may be an indication that there are concerns on how involuntary terminations are being handled (Kenya Law Reports [KLR], 2021). This research was founded on the Social Exchange Theory (SET), the Rational Choice Theory (RCT) and Conflict Theory to understand the relationship of the factors and involuntary employment termination.

According to Kenya Law Reports (2010), industrial relations courts, established under article 162(2)(a) of the Constitution of Kenya, help resolve employment and industrial

relations grievances and disputes. This is to ensure and maintain good employment relations. The courts receive grievances from workers, labour officers and employers after other efforts of dispute resolution fail (Republic of Kenya, 2007). The courts regulate healthy working environment that is fair to employers and employees by recommending resolutions for the cited grievances. In regard to involuntary employment termination disputes, employers have certain basis for resorting to employment termination decisions. The research project was therefore driven by the desire to study the issues that were considered on successful involuntary employment terminations on cases ruled at the Nakuru employment and labour relations court from year 2013 to 2020.

### **1.1.1 Involuntary Employment Termination**

Termination of employment may be voluntary or involuntary. Voluntary termination occurs when employee decides to end their current employment relationship. This could be due to finding a better job, retires, and resigns from work among other personal reasons (Kagan, 2021 & Lucas, 2019). Additionally Kagan warns that voluntary termination may be due to constructive discharge or dismissal. Kagan elaborates that under the constructive discharge (ultimatums to quit or be fired); the employee is left without choice except to quit.

Likewise involuntary termination of employment refers to stoppage of employee's services on employer's operations by the employer without fault of employee (Aegis Law Firm, 2019). This should be strictly handled professionally, legally and with due care to ensure smooth transition and non-disturbance of the core operations (Odeku, 2014). Involuntary termination of employment occurs when employer needs to layoff, dismiss or fire employee(s). Layoffs and downsizing happen because employee's skills-set are no longer needed. Employer may fire an employee due to unsatisfactory

work results, unethical behavior and conduct or employee being unable to fit in the company's culture by violating the core policies. According to Employment Act Cap 226 sec 43(1), employer is tasked to justify a decision of involuntary termination to employee, otherwise the termination is declared unfair. Illegal dismissals happen when the employer exits an employee on discrimination basis such as religious and racial affiliation, sex or physical disability among others.

However, employer may fire an employee for a specific cause such as poor performance when employee fails to achieve the targets. Firing occurs after being put on probation to improve on their work performance and ethics. On special circumstances, employer and employee may mutually agree to end the employment relationship by waiving each other's responsibilities (Heathfield, 2021). Summary dismissal happens when the employer is fundamentally aggrieved by the actions of employee: necessitating immediate release without pay or notice. As required by law, termination of employment has to be carried out in a specific procedure (Munshi, 2018). The following requirements outlined on Employment Act are the basis: termination notice having valid reason for termination, proper hearing, disciplinary process if necessary, compensation and pay in addition to clearance and issuance of certificate of service.

### **1.1.2 Factors that Influence Involuntary Employment Termination**

Employee turnovers are costly to the company (Njagi & Munyiri, 2014): key employees leave employment in addition to financial costs associated with acquiring and developing another employee (Lucas, 2019). As noted by Heathfield (2021), employment termination may be initiated by either employee or employer. Njagi & Munyiri (2014) illustrate that involuntary terminations take various forms and are driven by factors inherent to management, operations and the environment where the

employer operates: performance and economic conditions. For example the Covid-19 financial crisis led to massive layoffs after many employers exhausted financial resources (ILO, 2020). In addition, automation at work places may lead to redundancy; excess manpower is terminated if it cannot be economically utilized (Munshi, 2018).

Further, insubordination to organization officials or harassment of other employees and customers may precipitate to termination of employment of the staff in question (Heathfield, 2021). The Balance Careers (2021) concurs with Heathfield on termination but envisages the problem identified as an opportunity to help the employee realize and sort the problem rather than reprimanding them for the wrongs. The Balance Career further advocates that employer should make every attempt of observing the behavior directly. This would allow verification of facts aiming at helping out the employees who could be undergoing external pressures. Employment at will as recognized in some states allows the employer or employee to terminate the employment relationship at any time with or without a reason (Heathfield, 2021a). Odeku (2014) strongly condemns the willful and demeaning acts of arbitrary involuntary termination without consideration to effects of law and the socio-economic well-being of the affected employee.

### **1.1.3 Involuntary Employment Termination Remedies**

According to Kenya Law Reports (2010), section 161 of the Constitution of Kenya created an independent court of equivalent level as High Court known as Employment and Labour Relations Court [ELRC] to handle employer–employee disputes. Additionally there are labor officers strategically stationed at district level to handle minor employer – employee disputes. Inyangu (2017) confirms that the ELRC has

original and appellate jurisdiction to hear and determine employment disputes. Further, Inyangu demonstrated that the ELRC has the power to issue injunctions in cases of urgency or interim preservation orders, give prohibitory orders, order for specific performance and may order reinstatement of employee. Also, the ELRC may issue declaratory orders, compensatory orders or order for damages. Under compensatory order, the court may order: payment in lieu of notice, payment for accrued days, overtime, compensation for unfair termination and wages for worked days. On the other hand, sexual harassment, injury at work place, incurring expenses to the benefit of employer, reputation damage, employability reduced or employee destroys employer property attract court damages for the innocent party. In conclusion, Inyangu observes that remedy orders and compensation varies from case to case: court may issue any other order it may deem fit depending on circumstances of the case.

#### **1.1.4 Employment Terminations in Nakuru County**

Nakuru County is one of the 47 counties of the devolved county government units in the republic of Kenya. It is home to major industries, companies, governmental and non-governmental organizations. It has a sizeable number of employment opportunities for the general public and a fast growing cosmopolitan (County Government of Nakuru, 2021). Nakuru County therefore offers a representative population to sample when considering employment opportunities as well as related issues. The employed population in the formal and informal set up provides the source of employment termination issues which form the foundation of this research project.



Nakuru County registered 1,365 employment disputes that were determined at the Employment and Labour Relations Court of Nakuru from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2020 (KLR, 2021). Consequently, Nakuru County was third countrywide in the number of employment disputes after Nairobi and Mombasa in the period under review. 836 cases of the registered cases related to employment termination disputes accounting for 61.2% of the total disputes.

## **1.2 Research Problem**

The employment engagement advocated by the Employment Act promotes equal bargains on employer and employee (KLR, 2007). The binding employment contract is therefore desired to be clear and without ambiguity; written in a simple language. Deliberate efforts should be made to interpret and explain it to the employee (KLR, 2007). Employer should establish clear and concise communication channels understandable to employees to help in coordinating operational instructions. Disputes resolution mechanisms by employer ought to be strategically modeled to facilitate solving of employment grievances and or misunderstanding that arise in the course of employment (Kagan, 2021).

The employer and employee represent individuals who are able to learn and reason. They have feelings, emotions and responsibilities to handle including family and personal needs. It is therefore evident that employer-employee relationships are not only guided by the economic exchanges (Kagan, 2021) but include other non-financial as psychological satisfaction (Lucas, 2019). This being the situation, the employer's decision to terminate employee's employment contract should be well thought about and all possible mitigation sought before arriving at the final decision (Falcone, 2021). Njagi & Munyiri (2014) concur with Falcone that the involuntary

termination may be founded on critical decisions with severe effects on employees, who lose job, as well as the organization. This research explored the irresistible forces and factors that push the employer to resort to terminating an employment contract.

### **1.3 Research Objective**

To determine the issues considered on successful involuntary employment terminations in Nakuru County from year 2013 to 2020.

### **1.4 Value of the Study**

The findings of this research are intended to complement the growing human resource knowledge field for academicians and researchers. The research will therefore enrich the human resource theory with reliable literature on involuntary employment termination by reviewing and pooling together the available knowledge on the specified topic. From the insights and breakthroughs of past researchers, the research will blend additional insight to the current findings and by suggesting other areas where similar research may be undertaken.

The policy makers in the organizational level will derive knowledge on the factors that influence involuntary employment termination. This will help them in making informed decisions pertaining to the management of human resource in the organizations. The findings will therefore be relevant to policy makers in determining the appropriate ways of handling involuntary employment termination issues according to the priority of factors established. Additionally, Government agencies at county and national levels will also learn from the research findings on Nakuru

County. Similar research may be replicated so as to identify with other counties or at national level for policy making.

Further, the findings will be insightful to employees and employers' managers in highlighting the issues that may compromise their relationship with the view of avoiding involuntary employment terminations. The highlighted issues weaknesses as well as mistakes of other employees and employers in this study will provide practical learning experiences in view of avoiding them. The findings of the research therefore will be geared towards improving the perceptions of employees and employers by offering a fairly informed finding from the study conducted on the general public arena without interference.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1 Introduction**

This chapter explores the current human resource practices on involuntary employment termination and the influencing factors. The chapter is subdivided into: theoretical foundation, involuntary employment termination, variables relationship and summary of research gaps identified.

### **2.2 Theoretical Foundation**

The study will be anchored on the following theories: Social Exchange Theory, Rational Choice Theory and Conflict Theory.

#### **2.2.1 Social Exchange Theory (SET)**

Social Exchange Theory (SET) founded by George Homans in 1961 and later developed by Peter Blau and Richard Emerson. The theory emphasized on the individual behavior of actors in a relationship. Social Exchange Theory describes human behavior in relationships against the costs involved, rewards, profits and associated losses (Blau, 1964; Cherry, 2020). The theory suggests that an individual in any relationship will evaluate incurred costs. Homans observed that for a relationship to subsist there has to be a social interaction of activity revolving around the tangible and intangible rewards and costs (Cherry, 2020). Homans concluded that a relationship will exist optimally when profits outweigh the losses. The human decisions which impact on their behavior are guided by the value (worth) derived from the relationship as the difference between the costs incurred against the reward received.

Finally, Blau and Homans concurred that exhibited human behavior is modeled on the reciprocity rule that govern the mutual interdependence and interdependent exchanges. The mutual interdependence creates systematic mutual and complementary arrangements which determine if a relationship will be terminated or not. Homans noted that existence of valuable item is the basis of exchange relationship feasibility. This will give way to negotiation as to what amounts of the valuable item will be exchanged for the other with respect to vested self-interest.

Additionally, people are generally expected to maximize their benefits while minimizing the incidental costs. Human behavior is therefore influenced by the comparison level (CL) being the standard for a rational satisfaction depicting a threshold above which interpersonal outcomes seem attractive. This is the level or mixture of costs and rewards that individuals are willing to put up with in a relationship even when there are no alternatives (Blau, 1964; Hayes, 2020). Individuals in a relationship will as well have comparison level of alternative (CLA) when there is a next best outcome available in other similar relationships.

Social Exchange Theory is limited in lacking universality of how costs are determined by various individuals and portrays people as selfish by ever computing the cost-benefit analysis. It also does not factor the greed, competition or discrimination and deception that may be vested in a relationship.

Employer-employee relationship may be described by the SET. Both parties have an item of value which they promise the other. Employer promises remuneration, belonging to the company team and status to employee as the “valuable item” to exchange. To reciprocate, the employee offers work experience and expertise. Each

party will do the best to safeguard the relationship in as long as the value derived outweighs the costs associated. Any party to the relationship is therefore expected to remain in the contracted relationship until the costs exceeds profits from the relationship; when they either terminate or quit to abandon it. In this scenario, employer will resort to involuntary employment termination if the costs associated with the relationship get beyond a desired threshold.

### **2.2.2 Rational Choice Theory (RCT)**

The Rational Choice Theory (RCT) was first proposed by Adam Smith in 1776 in his economics essay about nature and causes of wealth of nations (Online MWS Programs [OMP], 2020). In 1950s and 1960s, sociologists Homans, Blau and Coleman advanced RCT in relation to Social Exchange Theory. The theory explains that people exhibit rational behavior where they take actions that benefit them versus actions that are detrimental or neutral (Blau, 1964; Hayes, 2020). Therefore, Rational Choice Theory demonstrates that people make prudent decisions by choosing certain actions which have greatest benefits or satisfaction than costs from available choices. The theory suggests that people have goals of maximizing the utility they derive from choices they make (Hayes, 2020). An individual's goals have influence on choices which govern their behavior. Rational behavior involves getting the most of monetary or material gains and or purely emotional or non-monetary gains.

Rational Choice Theory assumes that people are driven by rational calculations, they act rationally and that their choices are based on optimizing the benefits as compared to associated costs (Blau, 1964; Hayes 2020). The theory is limited in assuming that individuals always exhibit rationality in making calculations and deliberately picking

choices with optimum profits Blau, 1964). The human behavior is not always guided by rationality; there exists decisions which are recklessly made in haste without careful consideration while other decisions settled by individuals do not exhibit optimal benefits and therefore the completeness of the RCT needs further research (OMP, 2020).

Nonetheless, the RCT has significance in this research in exploring the possible reasoning that explains why the employer-employee relationship will exist at one time but get terminated after some time. The choice of an employer to release a specific employee for a specific valid reason may be considered as being a rational decision (OMP, 2020). Despite this rational scenario, the employer may make snap decisions which can be challenged by employees at employment and labour relations court.

### **2.2.3 Conflict Theory**

Conflict theory is credited Karl Marx (Fox, 1966; Chidi & Okpala, 2016). The theory views an organization as a union of sectional groups with different values, interests and objectives aimed at competing for limited resources (Hayes, 2020). Therefore the employees will have different values and aspirations from those of management. The sectional groups' values and aspirations are in perpetual conflict with those of management (Chidi & Okpala, 2016) and serves as a basis for their interaction rather than harmony (Engels & Marx, 1848; Hayes, 2020). Conflict theory acknowledges that conflict is inevitable, rational, functional and normal in organizations (Fox, 1966; Chidi & Okpala, 2016). Conflicts get resolved by compromise and agreement or collective bargaining (Rose, 2008; Chidi & Okpala, 2016) thereafter creating another chain of conflict (Hayes, 2020).

Hayes (2020) demonstrates that the basic premise of conflict theory is that individuals and groups in a society work to always maximize their own wealth and power: competition. Further, social and economic institutions are described as tools of the struggle between groups or classes used to maintain inequality and the dominance of the ruling class. The conflict theory assumes that the society will exhibit competition, revolution, structural inequity and war. Competition is a constant factor in nearly all human relationships due to scarcity of tangible and intangible resources (Hayes, 2020). Structural inequalities are experienced in human relationships and social structures. Further, Hayes explains that outcome of conflict is a revolutionary event because of its abrupt nature rather than gradual and evolutionary. Finally, war results from cumulative conflict between individuals, groups and societies leaving the society unified in some ways but conflict remains between multiple societies.

According to Lee (2019), the basic foundations of Conflict Theory are its own limits. Conflict Theory may only be applicable in certain environments and inapplicable in others for example the home. Under the theory, society is viewed negatively as always competing thereby discounting acts of kindness as having ulterior motives. In addition, humanitarian efforts, democracy and civil rights movements according to the Conflict Theory, were designed for control rather than promotion of peace (Lee, 2019). Ironically, if Conflict Theory were to entirely hold, topics on conflict resolution or peace integration would be obsolete and void in meaning. Despite these limitations, conflict theory remains very important to describe the possible causes of the involuntary employment termination.



## **2.3 Involuntary Employment Termination**

Employment termination may be voluntary or involuntary that is avoidable or unavoidable turnover respectively (Armstrong 2012; Fanou, 2018). Involuntary termination is undertaken by the employer whose only option is to release the concerned employee from the employment engagement. The key factors that are associated with involuntary termination are spelt out in the Employment Act 2007 attracting considerable interest from academicians and researchers (Ministry of Labour, 2022). Involuntary termination is influenced by instances where employees violate workplace policies (disciplinary issues), poor performance or when necessitated by economic adjustments as business slowdowns (Fanou, 2018). It is therefore evident that the employer should take all precautions in making the right decision right from recruiting, retaining until discharging employees.

Except when employer exits a probationary staff who fails to meet the expected work standards, any other discharge by employer is really costly in financial and non-financial terms (Heathfield, 2021). By vetting employee's records employer may be convinced that an employee is not fit and need to be exited (Falcone, 2021) Employment Act 2007 has given employer a leeway to initiate the termination on the following basis; summary dismissals, redundancy and poor performance or physical incapacity if and only if the prescribed procedure is followed(Lucas, 2019).

### **2.3.1 Summary Dismissal**

Summary dismissals represent an involuntary termination scenario. Employer releases an employee who commits a serious offence that fundamentally breaches their obligation arising from employment contract (The Balance Careers, 2021).

Employment Act 2007 indicates that employer has the right to terminate the employment contract without or with less notice than the one he is entitled by a contract or statutory provisions (KLR, 2007). Fanou (2018) exemplifies that gross misconduct, insubordination or abusive language to persons placed in authority, absenteeism, intoxication during work, negligence in performance of duties and employee refusal to obey the commands and instructions of persons in authority are core issues that may result in employee's summary dismissal. Falcone (2021) warns employers against appearing to rush the employment termination before conducting a timely thorough due diligence of impartial investigation. Falcone further notes that employer often get into litigations after making decisions in haste and without following the due process. Employers are encouraged to conduct broader investigations based on termination allegations and always get employees' side of the story (Odeku, 2014). Employee's defense needs to be given audience for the charges leveled against them before a conclusion is arrived.

### **2.3.2 Redundancy and Restructuring**

Redundancy refers to discharging employee(s) based on operational reasons especially when economic and commercial aspects of an organization are considered (Njagi, 2014). Redundancy occurs purely as a result of organizational strategic restructuring rendering the skills of the employee(s) without benefit to the organization (Munshi, 2018). Munshi elaborates that redundancy is caused by termination of a position and not the person unlike dismissals which are outcomes of disciplinary issues or performance. Compulsory redundancy is considered the last resort to an employer and is acceptable face of downsizing (Kagan, 2021). Redundancy strategy qualifies as a fair reason for involuntary employment

termination when employer ceases or intends to stop carrying business for which an employee was engaged. Employment Act 2007 allows redundancy to be among core reasons for involuntary employment termination and offers a clear due procedure to carry it out (KLR, 2007). Redundancy due to downsizing and restructuring is acutely different from insolvency redundancy; termination processes for the two are different as spelt out in Employment Act (Munshi, 2018).

The allowance to involuntarily terminate employment is however curtailed by the Employment Act (KLR, 2007) by being subjected to the rigorous due process where valid reason and justification for redundancy must be given. Also, there are related costs that the employer needs to cater for before releasing the employee on this ground: severance, notice, all arrears on leave and holidays as well as any agreed termination payments (Aegis Law Firm, 2019). Due procedure on involuntary termination is emphasized to avoid ambushing employees and possibly leaving them without livelihood (Compton, 2009).

### **2.3.3 Poor Performance and Physical Incapacity**

Performance refers to employer satisfaction with the work of the employee as stipulated in the job description (International Labour Organisation [ILO], 2011). If the work of an employee is deficient, the employer should provide channels of improving and monitoring the same through provision of right tools and required training (Kagan, 2021). Where the work expectations continue to fall short, the employer will need to justify that they have done everything necessary to help employee improve without success before recommending termination of employment (Inyangu, 2017). Poor performance may be caused by skills and technology mismatch

or the physical incapacity of the employee (Lucas, 2019). Work that require employee to be standing for long hours will not be appropriate to a physically challenged staff on a wheel chair. The employer should therefore match the work and capabilities of the staff.

#### **2.4 Issues Considered on Successful Involuntary Employment Terminations**

Fanou (2018) conducted a case study of AAR insurer on the effects of employee turnover on competitive advantage of insurance companies. The objective was to recommend to AAR how to mitigate employee turnover. The target population was 218 employees where a sample of 65 was taken. The research showed that voluntary and involuntary turnovers occurred due to factors as remuneration, unattractiveness of job, family needs and health of employees among others. The research was based on a specific company and little may be borrowed for application in general establishments. The research was also broadly investigating on employee turnover hence covered both the voluntary and involuntary turnovers. The research was specifically studying the issues considered in determination of successful involuntary employment turnovers or terminations. The population being considered was the general public from all types of companies that had involuntary termination disputes so as to determine the basis for which they were disputed and resolved. This gave the concluded research a gap to cover as it was a representative of the general public and therefore may be generally appreciated across the board.

Akala (2012) conducted a similar research on factors influencing employee retention among the non-teaching staff at the University of Nairobi, Kenya. The aim of the study was to establish if factors as training, performance appraisal, welfare benefits,

disciplinary procedure and potential career growth would have influence on employee retention. His findings were that the enormous retention rate of 98% was actually explained by the considered factors at various levels. It is clear that there was the other 2% who left the institution either on voluntary or involuntary. Despite the study confirming the factors that influenced retention, it fails to account for the factors that led to the turnover. This research will therefore identify the issues of consideration that influence turnovers initiated by employers in Nakuru County.

Saverio (2018) conducted a related research on the determinants of employees' turnover in public universities in Nyeri County Kenya. Her study examined both voluntary and involuntary turnover determinants on both the academic and administrative staff of Dedan Kimathi University and Karatina University. The research sought to understand the major reasons behind the employees' turnover. The researcher focused on checking remuneration issues, leadership styles, working conditions and career growth. The results of the study indicated that remuneration, leadership style and working conditions had significant effect on employees' turnover in the two universities. Saverio's research narrowly focused on Dedan Kimathi and Karatina universities' staff and was broadly investigating both voluntary and involuntary turnovers. The research focused on both voluntary and involuntary turnover thereby being broad. Further, the researcher's focus was to examine remuneration issues, leadership styles, working conditions and career growth which are totally different from what this research is about. This research addresses involuntary employment terminations and examines issues of determination of successful IET such as gross misconduct, redundancy, performance and restructuring with acute reference to determined cases in the Kenya Law Reports online repository.

## **2.5 Summary of Literature Review and Research Gaps**

Three theories were examined in the literature review. The Social Exchange Theory, which the research is anchored on, emphasizes on individual behavior of actors in relationships (Cherry, 2020). People exhibit preference to relationships that have benefits over those with costs. This is equally applicable to organisations as it is the people who manage relationships and resources of an organization by maximizing the benefits that accrue. Similarly, Rational Choice Theory demonstrate that people in a social set up have rational behavior (Hayes, 2020) of making prudent decisions which offer highest satisfaction. Additionally, the Conflict Theory illustrates an organization as a union of groups with different interests and values hence competing for the limited resources (Chidi & Okpala, 2016). Conflict Theory views conflicts as normal occurrences and are acceptable in organisations. These theories attempt to explain the possible reasoning behind human and organizational decisions.

Armstrong (2012) views involuntary employment termination as the option of employer to release an employee for a certain reason in a predetermined process. Summary dismissal arises as a result of employee's misconduct that ends up in disciplinary issues (Falcone, 2021). The result is termination of individual engagement with the organization. Redundancy and restructuring occur due to a strategic move by the organization leading to position elimination (Munshi, 2018). International Labour Organisation (2011) observed that deficient work output as spelt in the job description indicate poor performance. Furthermore, physical incapacity coupled with job mismatch ends up in poor performance necessitating involuntary employment termination (Lucas, 2019). Involuntary employment termination may therefore come up as a result of summary dismissal, redundancy, need for an

organization to restructure, poor performance or physical incapacity among other factors.

The study by Fanou (2018) on AAR insurer on the effects of employee turnover on competitive advantage of insurance companies was aimed to mitigate employee turnover. The research conducted did not examine the factors that influence employees' turnover. In addition, the research was confined to insurance company (AAR). Akala (2012) performed a related research on factors that influenced employee retention among the non-teaching staff at the University of Nairobi, Kenya. The study examined training, performance appraisal, welfare benefits, disciplinary procedure and potential career in establishing if they had any effect on employee retention. The research therefore failed to account for those who exited either on voluntary basis or on involuntary basis. Saverio (2018) researched on determinants of employees' turnover in Nyeri County, Kenya. The study was broadly investigating both voluntary and involuntary employee turnover with focus on remuneration. This research closed those gaps in the three previous studies by studying the issues that were considered on successful involuntary employment terminations in Nakuru County on a public platform over several years. The focus of this study was to investigate the influence of issues of determination such as gross misconduct, redundancy, restructuring, poor performance, physical incapacity and others on successful involuntary employment terminations which were not examined in the earlier studies.

## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 Introduction**

Mathooko (2011) describes that the research methodology section illustrates how research objectives are to be met. This justifies the methods chosen in light of research objectives. This section therefore offers detailed information to assure validity and reliability of methods suggested (Peter, 1994; Mathooko et al., 2011). It defines the research activity, process and progress measures, and what shall constitute success (Peter, 1994; Mathooko et al., 2011). This chapter therefore has been divided into the following sub-topics: research design, population of study, data collection and sampling, and data analysis and presentation.

### **3.2 Research Design**

Research design refers to an advance planning on methods to be adopted for collecting relevant data and analysis techniques being guided by research objectives, time and finances availability (Kothari, 2004; Mathooko, 2007). Research design is therefore the plan and structure of investigation conceived to obtain answers to research questions; the overall scheme of research (Dees, 2000; Mathooko, 2007).

The research was based on a closed descriptive survey to help determine the extent to which the factors being studied influenced involuntary employment terminations. Descriptive research is powerful tool when investigating multiple variables through observations or reviews without their manipulation as is the case of experimental research (Voxco, 2021). The survey design offers capability to collect large volume of data from diverse sample thereby being able to identify frequencies and patterns by



observation (Unite for Sight, 2020). Stratified random sampling was used to identify the specific cases from which the researcher gathered information from the Kenya Law Reports online repository.

### **3.3 Population of Study**

Kothari (2004) defines study population as a fairly structured bundle of events, elements, services, collection of things, households, or people to be subjected to a study. The target population for this research is the totality of cases that were decided by the employment and labor relations court of Nakuru and had involuntary employment termination claims. The period of consideration was from the year 2013 to 2020. According to the available data on Kenya Law Reports website, there are 1,365 cases documented in the period which related to employment and labour relations complaints. 836 cases representing 61.2% of the cases had complaints related to involuntary employment terminations. Both employer(s) and employee(s) lodged complaints with ELRC on perceived unfair treatment by the other party. In this regard, termination cases explored in this research refer to instances where employer initiated the termination. A representative sample from the 836 cases was taken and analysed.

### **3.4 Data Collection**

Data collections is the process of preparing and collecting data for the purpose of obtaining information to keep record on, make decisions about important issues and to pass the same information to others (Weller et al., 1998: Akala, 2012). Survey method of data collection was used. Scheuren (2004) defined a survey as a research method

for collecting information from a selected group of people using a standardized questionnaire.

The research was based on web content. The Kenya Law Reports website has a repository in the public domain which is free from any copyright restrictions. The website has a search functionality which allows users to search through the determined cases. The advanced search had: “termination” as the key word; time range being “first day of year to last day of the specific year” and Court picked the “employment and labour relations court at Nakuru” from the drop down list provided.

### **3.5 Sampling**

Akala (2012) and Adam (2020) introduce sampling as a technique of choosing or extracting a subset of data to analyze in order to determine qualities or predict trends and similarities of the larger data set. The secondary data was observed where inferences were derived from stratified random samples that were proportional to the determined cases in the 8 years. The sample size was attained using Yamane’s 1967 sample size computation formula. Target population was 836 employment termination cases filtered from online search engine covering the study period and had “employment termination” as the keywords. 95% confidence level and sampling error of 5% as is common in social sciences was applied.

From the target population and the desired confidence level, Yamane’s formula for sample size yielded a sample size of 271 cases. In choosing the recommended 271 cases to be sampled and studied, annual cases were allocated according to proportions of total cases in the specific year. Thereafter, stratified random selection was done using the Microsoft Excel which has capability of picking a representative sample

from a finite population. The selected cases were reviewed to assess the core issues of consideration on the judgement delivered at the summary section. Data findings were captured on a data collection forms for analysis.

### **3.6 Data Analysis and Presentation**

Data analysis is the process of systematic application of statistical and or logical techniques to describe and illustrate, recap and condense and evaluate data (Shamoo & Resnik, 2003). The identified sample cases were reviewed, data tabulated and tallied according to relationships. Tables and figures were the primary modes of presentation of outcomes of the exercise. In addition, presentation of outcomes was also through graphs and charts as was appropriate to help show trends and the relationship across the time frame chosen. The data was further statistically analyzed by measures of central tendency and sampling distribution. The primary aim was to establish if there existed underlying relationships in the sample to use in drawing inference about the population. Thus, a representative sample of the universe was useful for examination and results interpreted for the entire population.

# **CHAPTER FOUR: DATA ANALYSIS, RESULTS AND DISCUSSION**

## **4.1 Introduction**

This section presents results from the analysis of the secondary data provided in the data collection forms. Tables, charts and figures have been used to present the core findings. This research was intended to examine the issues that were considered for involuntary employment terminations on cases ruled at the Nakuru employment and labour relations court from year 2013 to 2020. Outcomes of this investigation were introduced, analyzed and interpreted in discussion.

## **4.2 Response Rate**

The researcher sampled 271 cases. Clustered random samples were picked using Microsoft Excel in proportions to the cases ruled per year to ensure representativeness. The sampled cases were reviewed and validated thereby offering a response rate of 100%.

Data collection form had four parts. First part was important to reference the sampled case during data collection. Second part was meant to identify if the complainant was employer or employee. The third part was examining from the Employment and Labour Relations Court judge ruling if the case qualified to be categorized as involuntary employment termination. The last portion confirmed the cited basis or issue of consideration if the case was confirmed as involuntary employment termination. Second to fourth parts were tallied per row and totaled. At the bottom of

the data collection form, there was a section to insert names of data collection clerk and signature to ease review process.

### 4.3 Cases Complainants

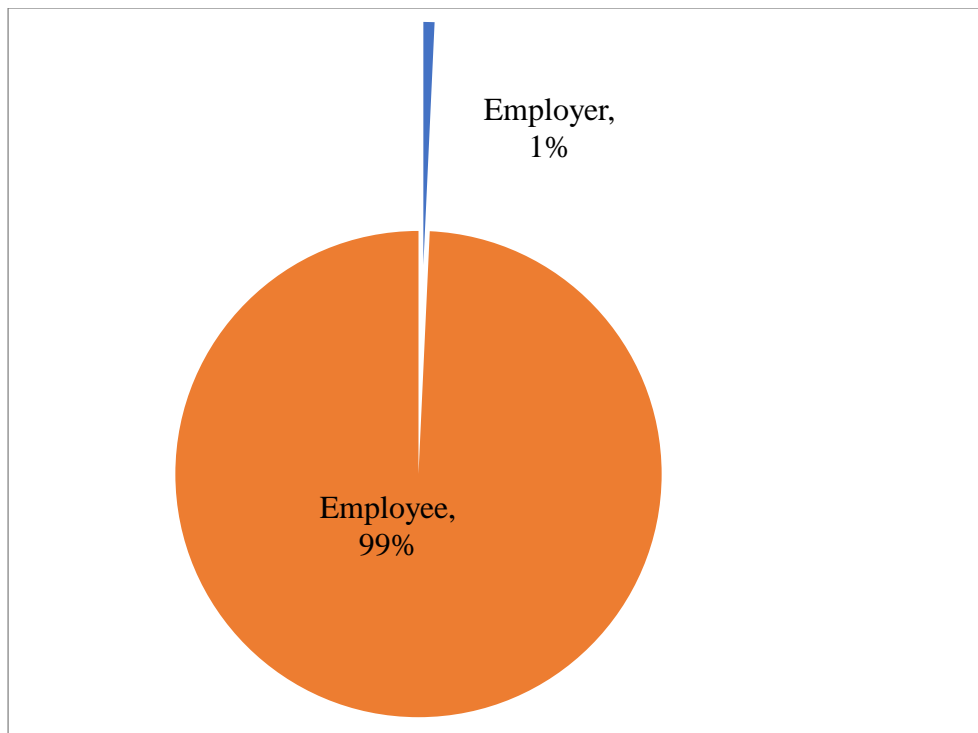
The table 1 shows the annual cases initiated by either employees or employers. From the period considered, there were 2 cases out of 271 cases sampled where employers initiated the complaint. 269 of the sampled complaints were initiated by employees representing 99% of cases ruled at the Nakuru employment and labour relations court as represented by chart 1. Employers-initiated cases accounted for 1%.

**Table 1: Number of Cases Complainants**

<b>Year</b>	<b>Employer</b>	<b>Employee</b>
2013	0	22
2014	1	45
2015	0	46
2016	1	36
2017	0	24
2018	0	25
2019	0	44
2020	0	27
<b>Total</b>	<b>2</b>	<b>269</b>

**Source: Secondary Data**

**Chart 1: Complainants Representation**



**Source: Secondary Data**

From the above findings and illustrations, it is evident that the employees were mostly the aggrieved parties who resorted to employment courts intervention for resolution.

#### **4.4 Cases of Involuntary Employment Termination**

The table 2 has annual data indicating whether the cases sampled were verified as involuntary employment termination or not. 86 cases out of the 271 sampled (representing 32%), were confirmed being involuntary employment termination. On the other hand, 185 cases out of the 271 (68%) were disqualified as not involuntary employment termination. The judges at the Nakuru employment and labour relations court were therefore convinced that the employers were correctly advised in deciding to terminate the 32% as per the cases ruled. The employers' decisions of terminating

the employment contract were therefore upheld. From the collected data, year 2014, 2015 and 2016 registered the highest number of cases that were dismissed as not involuntary employment termination. On the other hand, year 2019 and 2014 had the highest number of cases that were considered as qualifying to be fair involuntary employment terminations.

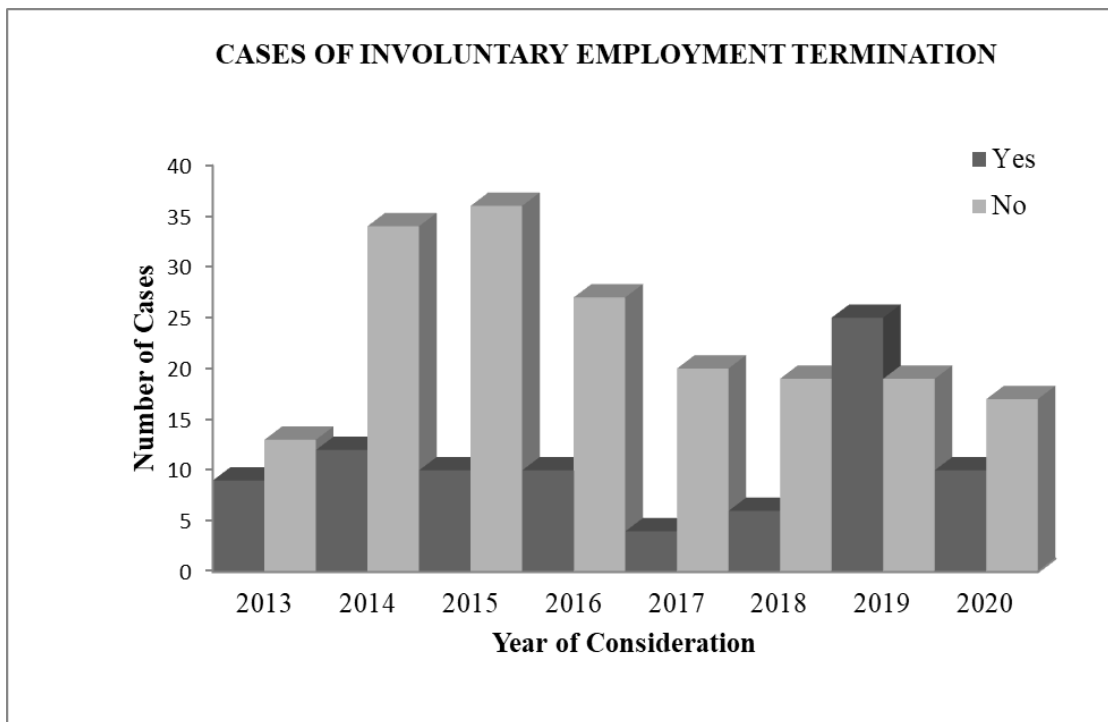
**Table 2: Cases of Involuntary Employment Termination**

<b>Year</b>	<b>Yes</b>	<b>No</b>
2013	9	13
2014	12	34
2015	10	36
2016	10	27
2017	4	20
2018	6	19
2019	25	19
2020	10	17
<b>Total</b>	<b>86</b>	<b>185</b>

**Source: Secondary Data**

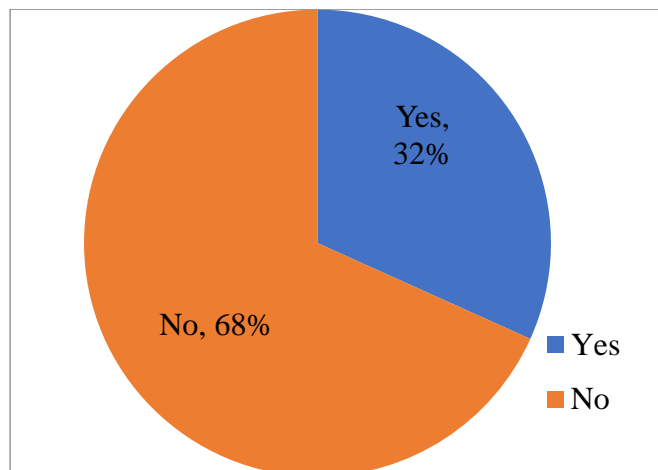
Figure 1 shows distribution of cases per annum in regard to whether they were qualified by the judges to be of involuntary employment termination or not. Chart 2 illustrates a pie chart of number of cases of involuntary employment termination from the summary of data collected in year 2013 to 2020.

**Figure 1: Cases of Involuntary Employment Termination**



Source: Secondary Data

**Chart 2: Number of Cases of Involuntary Employment Termination**



Source: Secondary Data



#### 4.5 Issues Considered on Involuntary Employment Terminations

Table 3 shows data collected and tallied according to years under review and the appropriate categories they qualified. Column two has issues of consideration listed out. Column three to nine has years 2013 to 2020 sampled cases with identifies issues of consideration for involuntary employment termination. For the specific year, row three to row thirteen tallies the cases according to the issue of determination identified. Issues considered for IET were whether if it was intoxication, gross misconduct, contract expiry, absconding duties, attaining retirement age, time barred, insubordination, redundancy, restructuring, poor performance, physical incapacity.

**Table 3: Issues Considered for Involuntary Employment Termination**

	Issues considered for IET	YEAR								Occurrences per issue considered
		2013	2014	2015	2016	2017	2018	2019	2020	
1	Intoxication	1	0	0	0	0	0	1	0	2
2	Gross misconduct	2	5	2	2	1	0	7	4	23
3	Contract expiry	1	0	0	0	0	1	2	1	5
4	Absconding duties	0	0	1	3	1	1	4	2	12
5	Attained retirement	0	0	1	0	0	0	0	0	1
6	Time barred	0	0	1	2	0	2	3	0	8
7	Insubordination	0	0	0	1	0	0	0	1	2
8	Redundancy	2	2	2	1	1	1	6	1	16
9	Restructuring	1	1	0	0	1	0	0	0	3
10	Poor performance	1	2	3	2	1	1	4	1	15
11	Physical incapacity	0	2	0	0	0	0	0	0	2
	<b>Annual IET cases upheld</b>	<b>8</b>	<b>12</b>	<b>10</b>	<b>11</b>	<b>5</b>	<b>6</b>	<b>27</b>	<b>10</b>	<b>89</b>

**Source: Secondary Data**

From table 3 we observe that gross misconduct ranked first with 23 cases, redundancy was second with 16 cases, poor performance was third with 15 cases and absconding duties came forth having 12 cases upheld. Cases that were time barred and were

therefore not raised within the required time by law ranked fifth with 8 cases. Other issues of consideration were contract expiry, restructuring, physical incapacity, Insubordination, intoxication and attaining retirement age ranked 7, 8, 8, 8, 11 respectively.

#### 4.6 Statistical Measures of Central Tendency

Using data in table 3 the researcher summed the total occurrences per issue for the period, mean per issue of consideration, standard deviation, ranks and percentages representation of the cases of IET upheld as per table 4 statistics.

**Table 4: Statistics**

	Issues considered for IET	Occurrences per issue considered (2013 - 2020)	Mean per issue considered	Standard deviation per Issue	Variance per issue	Rank of issue considered	Percentage Explained by Issue Considered
1	Intoxication	2	0.25	0.46	0.21	8	2%
2	Gross misconduct	23	2.88	2.30	5.27	1	26%
3	Contract expiry	5	0.65	0.74	0.55	6	6%
4	Absconding duties	12	1.50	1.41	2.00	4	13%
5	Attained retirement	1	0.13	0.35	0.13	11	1%
6	Time barred	8	1	1.20	1.43	5	9%
7	Insubordination	2	0.25	0.46	0.21	8	2%
8	Redundancy	16	2	1.69	2.86	2	18%
9	Restructuring	3	0.38	0.52	0.27	7	3%
10	Poor performance	15	1.88	1.13	1.27	3	17%
11	Physical incapacity	2	0.25	0.71	0.50	8	2%

**Source: Secondary Data**

The 86 successful involuntary employment termination cases from the 271 sampled cases represented 32% of cases from data collected between year 2013 and 2020. Two issues of consideration for successful IET were raised on three cases only while other cases had one reason for termination. The confidence level used in sample

determination was 95% which was consistent with the recommended confidence level in social sciences researches.

#### **4.6.1 Statistical Findings**

In the eight years reviewed, there were 86 cases that had qualifying issues of consideration for successful involuntary employment termination which derived a mean or average of 11 cases per year. This meant that in every year, 11 cases would be considered as having issues that were consistent with successful determination of involuntary employment termination. For the same period, the standard deviation of the cases per year was 7 cases. This indicated that the variability of the number of cases from the mean (11 cases) both on the higher or lower side was 7 cases. The least number of cases expected for any year was about 4 cases (11-7 cases) and the highest number of cases expected was about 18 cases (11+7 cases). Range of statistical data was obtained by subtracting the smallest number from the highest number (Saleemi, 2000). From the same data the range of the cases tallied for the eight year was 22 cases (27 – 5 cases) which indicate a high spread.

Considering the mean attained per issue of consideration, gross misconduct had a mean of 3 cases per year, absconding duties, redundancy and poor performance had a mean of 2 cases. Further, contract expiry and time barred issues had each a mean of one case while the rest: intoxication, attained retirement, insubordination, restructuring and physical incapacity had a mean of less than a single case. The mean per issue of consideration in the eight years explains the breakdown of the mean computed for the eight years.

From the percentage statistics, gross misconduct explained 26% of the issues considered in determining successful involuntary employment terminations followed by redundancy with 18% and poor performance with 17%. Absconding duties

explained 13% of the issues considered. The four issues of consideration jointly explained 74% of why the involuntary employment terminations were successfully confirmed by the Nakuru employment and labour relations court. 9% of the cases determined as successful IET were time barred and the employee had stayed for more than the required time of three years before lodging the case with the employment and labour relations court. Additionally, contract expiry, restructuring, intoxication, insubordination, physical incapacity and attained retirement age explained for the issues of consideration in the following percentages respectively: 6%, 3%, 2%, 2%, 2% and 1%.

#### **4.7 Discussion of the Findings**

This research established that majority of complainants of involuntary employment terminations were employees. It was therefore evident that employees were mainly the aggrieved parties who sought remedy through the established employment court system. Further, it was observed that a third of IET cases contested were validated and confirmed by the Nakuru employment and labour relations court judges. This meant that the employers were right in their decision and application of employment termination by releasing the employees concerned.

The study also revealed that the major issues for consideration of involuntary employment terminations were gross misconduct, redundancy, poor performance and absconding duties. The four issues of consideration explained 74% of the issues determining success of an IET case. This implies that an employer who cited and proved gross misconduct, redundancy, poor performance concerns or absconding of duties had a high likelihood of succeeding in such a case. Moreover, the study found out that cases which were delayed beyond three years before being registered with employment and labour relations court were ruled in favour of employers.

# **CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS**

## **5.1 Introduction**

The section offers a summary of the research outcomes in a detailed discussion of the concluded chapters. In addition, it outlines limitations of the study, makes recommendations and offers insight for further research areas.

## **5.2 Summary of Findings**

The findings are summarized in line with the objective of the study that was to identify the issues considered on the successful involuntary employment termination cases ruled at the Nakuru employment and labour relations court from year 2013 to 2020. The study found out that employees were the main complainants in IET cases ruled and that employers succeeded in a third of the ruled cases. The rest, two third of the cases, were dismissed in favour of employees as not qualifying to be successfully based on involuntary employment termination issues.

From the list of examined issues, it was evident that summary dismissal issues such as gross misconduct, absconding duties, intoxication and insubordination were the main issues considered to determine successful involuntary employment terminations. Redundancy, poor performance, time barred and contract expiry issues explained half of the successful involuntary employment termination cases. Restructuring, physical incapacity and attained retirement issues of consideration for successful involuntary employment terminations accounted for the remainder portion of 6% as they had inadequate observations from the data collected. It was therefore important to

highlight that employers would succeed in cases that they raised and proved on summary dismissal concerns, redundancy and poor performance against employees.

### **5.3 Conclusion**

From the foregoing discussion on findings by the researcher, successful involuntary employment terminations were affected by the following issues of consideration: gross misconduct, redundancy, poor performance, absconding duties, time barred, contract expiry, restructuring, intoxication, insubordination, physical incapacity and attained retirement. It was also found out that employers had a success rate of a third from the cases ruled creating more caution on employer-employee grievances resolution.

### **5.4 Recommendations**

Whenever employer is considering invoking involuntary employment terminations, it is important to consider the specific issue(s) for consideration to be cited for IET and determined if there is validity there on. This should be well thought and timely implemented to explicit fairness in the process of arriving at the conclusion. Areas that employers had ease to justify are summary dismissals revolving around issues as gross misconduct, absconding duties, insubordination and intoxication. Redundancy issue was justifiable where employer was unable to economically continue requiring the employees' skills and in regard to compromised / poor performance of allocated duties. Employer-employee relationship should be safely handled at all levels of engagement to foster understanding and productivity as fundamentally intended.

Consequently, employees should be cautious in preserving the employer-employee contractual relationship. They should therefore be keen not to cross boundaries that could end up in gross misconduct, absconding duties, insubordination, intoxication and poor performance issues which out rightly invite grounds for successful involuntary employment terminations. Employees should also be careful to watch the progress of organization growth so as to match their career and development growth with organizational development. By doing this, employees' skills remain needed by organization even when redundancy is declared. Grown and developed employees are competitively agile and able to secure alternative employment should there be need.

### **5.5 Suggestion for Further Studies**

This study examined intoxication, gross misconduct, contract expiry, absconding duties, attained retirement, time barred, insubordination, redundancy, restructuring, poor performance and physical incapacity as the scope of investigation. The study may be replicated in other counties in the republic of Kenya or in other nations on a similar employment setting. The scope of the research could be enlarged to include other issues of consideration in IET for examination and hence making the research more meaningful and insightful. From the data collected, employers did not present many cases to the employment and labour relations court; it may be insightful to study why the employers presented few involuntary employment termination cases. A similar research could be conducted to determine why majority of employees resorted to seeking redress through the judicial system.

Important to note is that the employer only succeeded in a third of the cases ruled. A research as to why the employers' decisions were challenged on two third of cases

ruled could be adequately conducted with high level of success. Further, this research considered the period when cases of reference were shared on digital media; similar research could be conducted covering smaller periods or running into the periods where data was physically archived.



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# APPENDICES

## Appendix 1: Data collection form.

**DATA COLLECTION FORM.**

RESEARCH TOPIC: ISSUES CONSIDERED AT NAKURU EMPLOYMENT AND LABOUR RELATIONS COURT RULINGS ON SUCCESSFUL INVOLUNTARY EMPLOYMENT TERMINATIONS, 2013-2020.

YEAR UNDER REVIEW: \_\_\_\_\_

INSTRUCTION ON HOW TO FILL THE FORM: TO BE FILLED IN CAPITAL LETTERS. UNFORMALLY MARK (X) / TICK (✓) THE APPROPRIATE BOX LEAVING THE OTHER(S) BLANK

Sample number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Case reference (From random sample)																														
Q.1 Who is the complainant?	(1) Employer	(2) Employee(s)																												
Q.2 From the ruling summary, does the ELRC judge confirm the case to be a successful involuntary employment termination?	(1) YES	(2) NO																												
Q.3 What was / were the issue considered for the successful involuntary employment termination from the ruling?	(1).	(2).	(3).	(4).	(5).	(6).	(7).	(8).	(9).	(10).	(11).	(12).																		
<b>TOTAL</b>																														

Name of Data Clerk: \_\_\_\_\_

Sign \_\_\_\_\_

Date of Data Collection (Start) \_\_\_\_\_ (End) \_\_\_\_\_