NO. 21-286

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ABEBA MEKONNEN, PRO SE, Petitioner

VS.

OTG MANAHMENT, LLC. Respondent

On Petition For Writ of Certiorari To The United States Court of Appeals For The First Circuit

BRIEF IN SUPPORT OF PETITION FOR WRIT CERTIORARI

ABEBA MEKONNEN
106 West Concord St. Apt. No.1
Boston, MA. 02118
Cell- 617-938-7632 -off
Msg. 857-318-9697
Msg. 617-938-9910
011251911253598 Ethiopia √
c/o E-mail: begashawayele@ymail.com

B

QUESTION PRESENTED.

1. **Whether employers can terminate employees by a Mystery Shopper Report in the context of Employment Laws.** [1]

2. Whether employer can terminate my employment by reason of "three failing Mystery Shopper Score" allegedly per the Employee Manual which the manual has NO such provision about "Mystery Shopper's Program" that I received on 8/4/2007. [2]

3. Whether it was legal by the employer to attach my August 4, 2007 signature and [illegible] provision about Mystery Shopper Program.[3]

4. Whether the new Employees' Manual can be the ground for terminating employees especially when the very word/clause of the program itself indicated that the program is only for "performance training" by awarding employees from $50-100 for those who score from 85%-100% but give more training "again" for those who score below 70%.

5. Whether the district court and the court of appeals for the first circuit were not erred in violating the Ledbetter Fair Pay Act of Jan. 2, 2009 by dismissing the plaintiff's Title VII claims, the and Massachusetts Wage and Hour law, the Disability discrimination claims, Age and Gender based discrimination claims all involved *compensation.* [5]

6. Whether it was not more than abuse of discretion by the district judge not only denying discovery right of my own Time Card and Payroll Record from employer despite motioning and re-motioning several times for reconsideration. [6]

7. Whether the district court has power to change the party's Theory of Argument?. In other word when I allege disparate treatment (regardless color, national origin etc.) the judge compared me with disabled people he created in mind but I did not alleged the disparte treatment on ground of disability

8. Whether the district judge has not misuse the Vexatious Litigant Statute by improperly using it as a tool to adversely decide against my case rather than follow what remedial prescription (bond, pre-filing fee ...etc) as stated in the law. [8]

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Statute

State Statute

State Case

INTRODUCTORY STATEMENT OF FACTS AND THE CASE

Statement of the Facts

Because the Rule Book of the Supreme Court doesn't show me whether a *Statement of Fact* to be included (similar to the lower courts' policy), I was forced to compile every possible documents that the parties exchanged (or have filed with court) and submit it herewith to support my petition with a hope that, from this bulky documents, the court will see and determine whether my petition has merit or is frivolous. I put the documents in a separate category such as A, B, C and D because I was unable to put all together as one volume as the documents are large to bind together as one. Above all, I submitted all possible documents because I sincerely **believed** that the Court of Appeals may not send the entire copy of the record to this court in the event this court granted this petition and order the lower court to send. I have seen similar scenario in the district court where some records was not sent from the district court to the court of appeals but at a later time and after Begashaw on my behalf ask "why?" and the clerk answered some reason. Therefore, please accept all documents accompanied this brief for petition and review the case de novo as the court of appeals (without proof) claimed that it had reviewed the case de novo. Pls. Note:- Because this is extraordinary claim by petitioner, I must put extraordinary answer to my assertion at the outset. The district court never cite the mystery shoppers' program statement found at the Employee Manual but may have read the individual mystery shopper's performance evaluation as defendant falsely asserted that they have a policy to terminate employees by mystery shoppers report which it never did before but only the *petitioner alone*. Second, the

district court and defense has not mentioned anywhere in their brief or the court's Memorandum and Order about the affidavit of Dawit Gurara as indicated at APP. pg. D130. The Affidavit is docketed as 177 and is indicated with the this brief at page **B**26. Not only the district court avoided the Mystery Shoppers guideline as stated in the Employee Manual (App. pg.32, 40, ¶7) as it ignored the Affidavit of Mr. Gurara but also never address why two employees were found sitting at work and had phone conversation but tolerated while plaintiff/petitioner was punished for identical rule violation, see (the two employees action at APP. pg. 184 and D188). Therefore, the court of appeals which claimed that the district court has *not overlooked* any document is not true. Having said that, I shall address the rest below.

STATEMENT OF THE CASE.

This case was originally filed with the Massachusetts Commission Against Discrimination "MCAD" on Ma Sy 10, 2010 [9] and the wage law claim was also filed with the Massachusetts Attorney General Office and on May 25, 2010 the Mass, AG office issued the right to bring a private lawsuit. [10] ubsequently, petitioner filed the complaint with the Massachusetts Suffolk county Superior Court on October 22, 2012 but OTG removed to Federal Court on 11/23/2011. [11] After the case was filed in Federal Court, plaintiff amended the exiting complaint by adding the claim for Sunday Premium pay as (count 5(2) and age discrimination as (count 6). [12] Plaintiff also

---

[9] Petitioner's Appendix D, page D195

[10] Petitioner's Appendix D, page D231

[11] Petitioner's Appendix B, page B12, Dkt no.

[12] Petitioner's Appendix D, page D204

motioned the court to dismiss individual plaintiff, (because the manager was not charged at the commission. After court dismiss the individual defendant and the two counts claim, there were five counts left including disability discrimination, religious discrimination, gender discrimination retaliation and retaliation under title VII and the retaliation Massachusetts Wage law claim. Defendant filed its summary judgment against these claims on or about November 3, 2016 and the court dismissed the complaint and entered final judgment on July 25, 2019. [13] Plaintiff filed motion for extension of time to file the notice of appeal but denied. [14] Within the time left to appeal, petitioner, however, had filed and the case afterward transferred to the court of appeals and docketed. After the case was docketed on 09/09/2019. I filed t66he original brief and Appellee responded with large size document causing Appellant to request the appeals court to file enlarged reply brief but denied *without prejudice.*[15] However, the decision of the appeal court affirming the district judge's Memorandum and Order was mailed to petitioner's address on March 25, 20021, three days after the stated reason for the denial of the motion to enlarge the reply brief was mailed. The decision, of the appeal, however was not accessed nearly a month later by my daughter but not by me as I was and still in Ethiopia. After this scenario by the appeal court, this petition was followed.

OPINION BELOW

This case was before the U.S District Court (Judge Woodlock) case no. 1:12-cv-

[13] Petitioner's Appendix B, pg. no. B10,

[14] Petitioner's Appendix, B, pg. no. B28, Dkt. No. 200/202

[15] Petitioner's Appendix, page B8 Dkted on 07/01/2020

12183DPW. Some of the cases was dismissed before summary judgment and the rest summary judgment on July 25, 2019. As the district court has not entered final judgment on the claims dismissed befor summary judgment has been appealed to the United States Court of Appeals for the First Circuit. For questinable scenarios the appeals court affirmed the loweg courts decision without explanation and only with few line of statements on March 23, 2021.This petition for review is presented at this time.

JURUSIDICTIONAL STATEMENT.

This court has jurisdiction to review this petition under 28 U.S.C c.1254(1) which the court had dismissed the plaintiff's various claims before and at the summary judgment stage. The court of appeals for the first circuit had affirmed the district courts memorandum and order only with 13 line of statements on March 23, 2021. All the claims except one small one in the Massachusetts Wage Law front dismissed include the following: Disability Discrimination under Massachusetts General Laws (MGL) 151B and/or Americans with Disability Act of 1990, 42 U.S.C. sec. 12101 et. Seq . (Count 1), Religious discrimination under MGL- c. 151B et. Seq. and Title VII of the Civil Rights Act of 1964, 42 U.S.C. s. 2000e et seq., (Count 2) ; Gender discrimination under MGL. c. 151B et. seq. and/or Title VII of the Civil Rights Act, 42 U.S.C. 2000e et.seq, as amended, (Count 3); Retaliation under MGL c. 151B et. seq and/or Title VII of the Civl Rights Act of 1964, 42 U.S.C, 2000e et. seq, as amended; (Count 4); The Massachusetts Blue Law MGL c.136 sec. (Count 5(2) and age discrimination under Title 20 U.S.C. Sec. 623. (Count 6); The court of Appeals has not stated reasons for affirming each claims and

it is generally believed (the13 line statements by the court prove it has not reviewed de novo.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED..

This case involve State and Federal statutes such as Mass. General Laws ch. 151B et. Seq. for civil right issue and the Mass. Wage Laws as well as Title VII of the Civil Right Act of 1964, 42 U. S. C. 2000et. Seq. as amended. The petitioner's complaint also involve the American with Disability Act, 42 U.S.C.12111 et. Seq. The rest is the Fair Pay Act of January 29, 1990 which this court should review retroactively many of Petitioner's claims that relate to the *compensation issues* such as Sunday Premium Pay as per MGL. c.136 sec. (6)(50) that I should have been paid but employer refused and the district court dismiss my claims by reason of statute of limitation where there is no time limitation under the FPA.

REASON FOR GRANTING THE WRIT

This petition should be granted for review for the following reasons. As Petitioner detailed each reasons, many of the reasons discussed in this part for the writ are related to the writing of the Summary of argument and the argument, Therefore please constru any issue discessued here as supplemental to the summary argument and argument because the summary of argument and argument will be written in the shortest possible way due to page limitation. If the writing of this document exceed a little more than 40 pages (which I am not sure for how much) I respectfully request the court to accept the anticipated large page of this brief. The reasons this petition should be granted are as follows:

1. Conflicted decision between equally situated federal District courts.
2. Uniqueness of the Case
3. The Appellate court has not reviewed this case de novo.
4. District Court abuse his discretion in many ways including the following:
   (i) Denied my discovery motion (My own Payroll and Time Card Record);
   (ii) Forced me to be deposed using my adversary as an interpreter,
   (iii) Remain silent when Defendant in its own right (not by motion) disregard corrected deposition (the Errata Sheet) and use original [16] and,
5. The Court Improperly Used Politics to Dispose the Complaint:

I haveBriefly explained below:

1. **Conflicted Decisions Between the District Court and the Firs Circuit Court of Appeals in one hand and many other Federal District courts on the other.**

After the Fair Pay Act of January 29, 2009 had superseded the Ledbetter v. Goodyear Tire and Rubber Co. Inc. case, 550 US 618 (2007) or 127 S. Ct. 2162 (2007) the lower courts should not have dismissed this case and the court of appeals also should not have affirmed such erroneous decision. Because "statute of limitation" was found as a stumbling block by congress to the Civil Rights claimants who may have failed to assert a timely claim with administrative agencies, congress passed the Fair Pay Act so any claim involve compensation will not be barred by statute of limitation. The petitioner's dismissed claim by the district court including the Massachusetts Wage and Hour claim have been dismissed. (including the Sunday premium work the vacation and related claim should not have been dismissed. Same should be true for termination of employment because terminating employee by itself is is capital punishment at least in economic sense.

Petitioner's other benefit such as denial of transfer for a better work and wage is also one of the many laims that involve compensation in which the court declined to dismiss is found verne Gentry v. benefit such as denial of transfer for a better work and wage is also one of the many claims that involve compensation in which the court declined to dismiss is found verne Gentry v. Jackson State University, 610 F. Supp. 2d. 564 (2009) (defendant's motion to dismiss the plaintiff's Title VII was denied because the professor who was denied tenure in the teaching profession which affected her salary increase or compensation) and, see also Vuong v. New As this court see from the Memorandum and Order of the District court and also from defendant's argument, 90% of the complaint was dismissed using this artificial barrier. Petitioner also will indicate in the argument section that my age discrimination, denial of transfer are not only unreasonable but also the denial of higher and better wage. SeeYork Life Insurance Co. Inc. No. 03-civ. 1076 TPG, 2009 WL (where the court found plaintiff's complaint four years before his EEOC charge was timely under the Fair Pay Act) see also Rehman v. State University of New York at Sttony Brook, 596. F. Supp. 2d. 643, 651 (EDNY 2009) (where in a case involving allegation that defendant refused to propose the plaintiff for appointment to associate or full professor with tenure, court held that although plaintiff filed his EEOC charge on april 13, 2007, under the Lilly Ledbetter law his wage discrimination claims based upon actions occuring on or after April 13, 2005, two years prior to his EEOC charge; were timely), Also see, Bush v. Orange County Correction Dept. 597 F. Supp. 2d 1293, 1295 (MD. Fla. 2009 (holding that

[16] *D's Memo of Law in Support of its Motion for Summary Judgment, at APP. pg. D8, fn. no.5. This is where the lawyer took the law into his own hand.*

while plaintiff's complaint about demotion and pay reduction that occurred sixteen years before EEOC charge was filed would plainly be barred under the Supreme Court's Ledbetter decision with the passage of the Lilly Ledbetter Fair Pay Act, plaintiff's Title VII, however, were no longer administratively barred)

2. The Uniqueness of the Case

Since the program of Mystery Shoppers was designed for comparative advantage in the business environment, managers and supervisors also used it as a tool to terminate their employees. This was a strategy by itself since supervisors do not like to deal with every 'blame resisting' employees who do not want to be questioned on every performance issues in the job and, therefore, managers and supervisors use the third party's report as a means to terminate their employees. This is not the policy in many company and that is why Mystery Shoppers opinion strongly suggest not to terminate employees per such report as the reported enter the store and write a 5-10 minute report to cause a 20 years employee. In fact, how the individual who has no supervisory control of an employee cause the termination and yet you can not locate to demand his testimony in trial or deposition.

The manager who received such report (no matter how false or unrealistic may be) will use the report to tell his employee that such and such was reported against you and therefore, you are "fired". This is what happened to this petitioner after the fact. It was after the fact because at first petitioner was not told that my job was terminated because of mystery shoppers report. The reason for my termination was for having phone conversation at the company's time and with a coworker on the other side of the

same store about business. (N.B:- That is why I never mentioned the Mystery Shopper Report story in my administrative complaint). Mystery shopper policy may differ from company to company and as OTG's "Employee Handbook" revealed, the shopper report do not dictate employment termination, (whether the employee properly received such mystery shopper program as part of employee Handbook) because such report is only for evaluating business performance for comparative advantage with other companies and not for termination. This is unusual and unique in the employment world and no mystery shopper experts support such adverse action as the appended, non-authoritative four separate experts' opinion indicated at **App. pg. D166 -183.** (Also please note that I attached these articles as information only as there is no reported case law by courts despite my effort in searching many times). As can be learned from many other companies, terminating employees by a mystery shopper report is uncommon but OTG Management, LLC. terminated my employment even where I have no contractual agreement by the company's Employee Manual which have no mystery shopper provision that I received on 8/4/2007 (APP. pg. 106-119). Employer alleged my termination was per Employee Manual seen at (APP. pg. 32-53) which I have not received the (amended?) document at all nor signed as an acknowledgment in receiving it. The Mystery Shoppers clause found in this manual is only for *training purpose not terminating* which the court never see what the manual states but use individual mystery shoppers report and his own assumption.

The Appeals court affirmed the lower court's decision by stating as follows:

> *".... After our **careful de novo review** of the **whole** record and consideration of the arguments presented by the parties .... we*

> *affirm, substantially on the reasoning of the district court's July 25, 2019 memorandum and order. We agree that the record presents no genuine issue of triable fact as to any claim asserted in the amended complaint. (emphasis added) see, App. Page B-1.*

This short statement that one writes in the name of three judges should be false because the very shortness of the narrative explained itself that nothing was reviewed de novo. In any court of the globe, no court on social justice and law, from the Hammurabi times to the Greeks of Plato and Aristotle,) an appealed case should not be decided in such a way because such statement does not indicate that the court had, indeed, saw the complaining party's (or the opponent's) argument to reach at rational decision in favor of one or against the other. In other word, without **stated reason** for a given cause of action mentioned in the dispute (no matter how the reason explaining the decision is limited in few page or pages,) the court should address each element of the claim and state the rational reason why it affirmed the decision or overturned the same. Here the court did not do that because the court has not reviewed the case de novo.[17] The district court who has not seen any page of the employee manual had based his decision only by

---

In fact, on March 16, 2021, from Ethiopia I called my former husband Begashaw in Boston and asked him whether the court of Appeals had entered its judgment on the pending appeal of this case. And Begashaw told me he will call me back *once he got the answer from the court. Begashaw called me on the third day, 3/19/2021 and told me that he had asked the clerks office by phone and was told that the case will be presented to the three judges panel within the next 2-3 weeks and the decision may be made near to that time or a little later. When waited for that time, and on March 23, 2021 the court entered its judgment on March 23, 2021 and on March 25, 2021 the decision mailed to my address but nobody was able to access the mail at home as I was (and still am in Ethiopia). When my daughter returned from her temporary stay at her uncle's place of residency, a month or so later she found the mail and handed to Begashaw where, as usual, Begashaw was attempted to help me further such as filing Motion for rehearing. etc) but it was too late to file Motion for Rehearing and therefore* I was forced

reviewing individual mystery shoppers' report that won'tpermit management to terminate employees by mystery shopper report. If the court of appeals had seen the Employee Manual it would have reached with a different opinion but it did not reviewed and reversed the lower court's decision. As said, the lower court also ignored many exhibits that support petitioner's position and no one will miss to find the judge did this from the first page to the last page of the Memo. and Order. For example, he never mentioned a co-worker (Ms. Tsega) who was sitting has not received written warning (APP. pg. D184.pg. D184) nor mentioned another co-worker, Ms. Endale, who was on cell phone conversation while working but like the petitioner, she was not fired (see APP. pg. D188). Why the district judge purposely avoid these facts and declined to give weight to the Affidavit of Mr. Gurara because the testimony could have discredited the defendant's policy on transfer, employees' job description, his testimony that there are no female utility workers allowed to work as the job is always filled by male employees. All the above mentioned points were not addressed by the district judge, the court of appeals untruly asserted that there is *nothing that the district judge "overlooked"* the plaintiff's submission. In the face of these evidences, the district judge also stated:

> *" ... That said, I have, as will be evident in the Memorandum, I read Ms. Mekonnen's submissions Libra ... To that end I have painstakingly sough to provide a reasoned explanation of my resolution of evry alternative theory colorably presented by Ms. Mekonnen in this litigation" See Memo. & Order, APP. pg. B54, fn. 1 of last paragraph).*

The district court who has not seen any page of the employee manual has based his decision only by reviewing individual mystery shoppers' report only to dispose the

claim as if the employee manual permit my manager to terminate employees by mystery shopper report. If the court of appeals had sen the Employeeemorandum and Order. Rather, the court selectively ignored many exhibits that easily refute defendant's position. For example, he never mentioned a co-worker (Ms. Tsega) who was sitting at work but like the petitioner, has not received written warning (APP. pg. D184)D184) nor mentioned another co-worker,Ms. Endale, who was on the phone conversation at work but like petitioner, shewas not fired (see APP. pg. D188). The district judge not only avoided petitioner's exhibit but ignored a-coworker's affidavit. For example, Mr. Gurara who discredited the defendant's argument about transfer, employees' job description, his testimony that there are no female utility workers allowed to work as the job is always filled by male employees. Therefore, the court of appeals should not assert that there is *nothing that the district judge "overlooked"* the plaintiff's submission. Had the appeals had seen it the manual it would have reached with a different opinion but it did not reviewed and reversed the lower court's decision. As said, no one will find the judge did this from the first page to the last page of the

The District court abuse his discretion in many Other ways.

The District Court abuse his discretion by (i) denying my several motion on

---

to advance this petition without motioning the appeals court for rehearing. The point is why the court said it will take time to make the decision but sent the decision in days?? (NB:-March 20 and 21, 2021 are Saturday and Sunday and courts are closed). This suggest that the court of appeals has not reviwed my appeal de novo. The other objective evidence will be shown that the district court did not saw many exhibits including the Employee Manual, etc. In some situation, there is indication where he saw the exhibit but did not grasp the substantive point that he should have see but in vain, for example the Affidavit of Dawit Gurara was properly served on defense counsel and it was filed with court and recorded as Docket No. 177, as seen at APP. pg. B26

discovery(specially my own payroll record and Time Card), (ii) forced me to go to deposition using my adversary for my Amharic (Ethiopian language) interpretation by denying my Motion for Protective Order without reason, (iii) remain silent when defendant informed the court on the summary judgment brief (not by Motion to strike) that it will not use the corrected [18] deposition statement (on the errata sheet) had substantive change and therefore, rely only on the original copy of the transcript alone, and, (iv) Despite prior order by court to take my assistant's deposition (see APP. pg. B17 of docket no. 69 and notice of deposition already served to Begashaw Ayele (see APP. pg. D202) the court ordered defendantnot to take the deposition and nobody knows but my belief is the judge expected the affiant's testimony will strength my cause and the judge does not like it. It is understandable. See the court's order at APPpg. B22, Dkt. no. 129. The court also barred my assistant to help me as if he was not allowed before to translate my language on motion hearing, See APP. B17, Dkt. No. .69.

5 The District Court Improperly Used Politics to Dispose the Complaint:

It is reasonable to believe the case before the judge at the district court was a politically oriented complaint because Title VII by its very nature is a politically motivated statutory law that congresses enact to eliminate unfair employment practice including race, color, national origin. . . etc. However, Judge Woodlock used it for his political advantage to punish myself and my assistant as the argument will demonstrate in the paragraph below.

---

[8] *See, Defendant's Memorandum of Law in support of its Motion for Summary Judgment at APP. pg. D8, ft. nt. no. 8.*.

a. **The Vexatious Litigant Issue used As His Weapon of Attack**

This is the civil complaint plaintiff filed against my former employer and not the lawsuit my former husband, BegashawAyele brought against my former employer. Begashaw may have 2,3, 4..... 5 or 100 lawsuit against his former employers two decades ago and before we were married. He, the [the judge] related Begashaw's old court history to my current case and called us together "vexatious litigants". See App. B52-54. The district judge listed all the lawsuit Begashaw had filed in the past and stated what the outcome was. Although Begashaw lost some of the cases, settled others and prevailed on the rest, the court deliberately stated facts to the contrary and characterized one of the cases that Begashaw won as a "lost" cause. For example, in the *Begashaw Ayele v. G2 Secure Staff, LLC. 1-17-cv-10417RGS,* Begashaw was a prevailing Party. Moreover, the judge had the record of the case within his reach as this was a court record and need not to write untrue statement simply because he wanted to show that Begashaw is/was a vexatious litigant without realizing that his effort in discouraging victims of discrimination (whether racial or other) is what encourging us thus make no distingisio between discriminating companies and judges who are guarding corporate interest at the expense of victims. As said, despite of the court's barring of Begashaw from assisting me, judge Woodlock never stated any reason why Begashaw can not help me as long as he has not acted like a lawyer (write my case and *sign,* appear in court and *debated* against opposing counsel . . . etc. As this case is our common cause (because the termination of my employment and the lawsuit was occurred two years before our divorce), the judge has no reason to bar him from helping me either writing my paper or advising me on procedural matter. In fact, what he advised me to refuse to be deposed by defendant's *unilaterally* scheduled deposition was

due to the death of familymember and complicated birth issue of my daughter's hospitalization at Mass. Gen. Hospital. However, the deposition finally was completed after my problems on family matter and also after defendant's motion to compel was heard. The district court was wrong to relate the unrelated lawsuit history of my former husband and my refusal to appear for deposition was correct. By relating Begashaw's case to my case, the judge had violated the Vexatious Litigant statute since the law can not be used as a weapon to adversely decide complaint once the complaint was filed but to set some pre-filing conditions such as bond or *advance notice before the lawsuit was filed*. In *Ayele v. U.S. Security Associates, inc. Case No. 1:1:05-CV-11273-WGY (D. Mass. Oct. 5, 2005) Judge Young* simply informed him [Begashaw] that "*any future lawsuit should first be drawn to the judge's attention* (before docketed) **and that is all.**

He further stated:

> "Moreover, Mr. Ayele's experience in this court is not limited to employment discrimination suits, he has also pursued other related categories of claims., citing Ayele v. G2 Secure Staff, LLC. Case No.1:17cv-10417-RGS (D. Mass., May 5, 2017). Mr. Ayele sought to vacate or modify an arbitration award ***entered in favor of his former employer pursuant to the employment agreement and the National Labor Relations Act (NLRA),*** [19] *See, APP. pg.54, ¶1; (emphasis*

The district judge got the information wrong because my former husband neither filed the Arbitration claim under the National Labor Relation Act nor the arbitration award was entered in favor of the employer. Rather the plaintiff's original claim was under Title VII but the arbitrator changed it to the NRLA claim to avoid punitive and compensatory damage award available under Title VII. Plaintiff was the prevailing party,

however. So why the judge misstated facts unless he try to picture everything in a negative picture.

(b) The court's allegation protracting the case for long Time.

In his introductory part of the Memorandum and Order of July 25, 2019, the judge started his analysis by openly revealing bias against myself, the plaintiff-petitioner and my former husband, Begashaw Ayele. In ruling on Defendant's Motion for Summary Judgment at the very first page and first paragraph, Judge Woodlock stated the following:

> " *Plaintiff Abeba Mekonnen has formally proceeded pro Se but also has, at all stage in this litigation, been advised, mostly from behind the scenes by her former husband, Begashaw Ayele. ...Though Mr. Ayele is not an attorney, he he has unsuccessfully sought to appear on behalf of Ms. Mekonnen and has involved himself in the proceeding as an officious intermeddler and* ***'his participation has interfered with the effective and orderly prosecution of the dispute' to such extent that, during a hearing on September 23, 2014, I barred Mr. Ayele from purporting to act further on behalf of Ms. Mekonnen.(emphasis added)*** *" – paraphrased) See, Memo and Order of July 25, 2019 which the court, cited Dkt Nos. 90 and 92. or See also APP. pg. B54,*¶3.

The above statement is true ONLY as to the barring of my Assistant and former husband, Begashaw Ayele if "barring" means not to talk in court as an interpreter or appear in what he called "my court" (but we believe that court is America's court). The statement about barring, however, has problem because the court several times recognized Begashaw as an interpreter of my/our Ethiopian Amharic language into English as well as permitted Defendant to depose Begashaw, See, APP. pg. B17, Dkt. No. 69. until again the judge ordered Defendant not to take the deposition of Begashaw, See APP. pg B22, dkt. no. 129. We believed the judge's swift change of order

was because he anticipated Begashaw's answer to the deposition will strength my case. This is evidenced in other discovery matter because the court (probably this judge and his court only) are unique from other courts by denying "employee's" own Payroll Record and Time Card. Insult to injury, as they say, the judge declared his bias from the start and has continued to the summary judgment as follows :

> *Mr. Ayele and his tactics are not unknown to the various members of this court and at least one of my colleagues indicated well before this litigation was filed that Mr. Ayele should be treated as a potentially vexatious litigant. (citing Ayele v. U.S. Security Associates, inc. Case No. 1:1:05-CV-11273-WGY (D. Mass. Oct. 5, 2005)." ... I have similarly found in this proceeding a lack of candor and an indifference to* ***procedural rules*** *by both Ms. Mekonnen and Mr. Ayele. - emphasis added); See Memorandum and Order of July 25, 2019 from APP. pg. B29 -B57 specifically at APP. pg. B52, and B54 at ¶4. and under sub-title "Appendix."*

All the above blames by the judge does not indicate what specific offense I or my assistant exhibited except rightfully refused to appear for deposition for valid reason. And that is that. Regardless, we agree to the day imposed by the court because at this time, my daughter had safe baby boy delivery and the funereal of my cousin was completed.

SUMMARY OF ARGUMENT.

The Petitioner's summary of argument are stated briefly as follows: Plaintiff/petitioner as Cashier for OTG Management, LLC. was working from August 4, 2007 to November 19, 2007 but terminated for having cell phone conversation with a coworker as the cash register was not reading the bar coded price of a bottled water because the bar code was scratch. I was terminated for said conversation but the co-worker Yoseph Temesgen was

not terminated. See, copy of my original complaint with the Massachusetts Commission Against Discrimination at APP. pg. D195. In responding to the charge filed with Massachusetts Commission Against Discrimination "MCAD," OTG Management, LLC. submitted *completely different* reason for my termination. They alleged that I was terminated for failure to pass the mystery Shoppers' Report on three different occasion, (See, APP. pg. D54, 56 and 58). The common feature of the three mystery shoppers report as as can be read therein include that I was talking on the cell phone while serving customers, that I do not know the food items or ingredients, that I do not smile in greeting customers. Although the Defendant's **sole** reason for my termination was for the three mystery shoppers report, (a report by a third party company employee who report their shopping experience and report to management and become part of the Employee Manual for the company that hired me and all other employees.) I was also accused for other reason including for sitting on an empty (plastic box) and another for alleged "failure to check expired milk" in the cooler. Except sitting on the plastic box due to my disability and due to employer's failure to accommodate the problem, ALL charges are false and proved by a preponderance of the evidences. However, in the course of the proceeding in the district court I and my assistant and my former husband, Begashaw Ayele, have developed endless disagreement with the district judge, my case was dismissed by suppressing my exhibit/evidence and by accepting false and fabricated document from defendant and the court dismissed the complaint. The summary of the entire case is therefore stated as follows:

ARGUMENT

Termination of employment by a third party report is the uncommon practice in all area of employment and rarely done so by some employers. OTG Management was no exception except it terminated petitioner for reason of hostile and discriminatory reason. OTG managmen provided one and only one reason for terminating my employment and this one reason has alleged violation of the company policy as prescribed in that policy including the "Mystery Shopper Program" as indicated at APP. pg. 32-53 and the other Employee Handbook as indicated at APP. pg. 106. 119. Employer has no right to terminate based on the cited policy because, **(1)** the Employee Manual received upon my hire on August 4, 2007 (APP. 106-1190 has **NO** provision about mystery shopper policy and therefore, no employment contract exist on that police manual indicated at APP. D106-119. **(2)** Employer also can not terminate my employment by the other (amended?) Employee Manual as indicated at APP. pg. D32-53 because the manual despite its provision about mystery shopper program can not be used for termination of employment as the policy clearly indicate that the mystery Shopper program was only for training purpose and to encourage employees by rewarding money from $50-100 for good performers scoring 85%-100 but to give additional training "again" to those who scored below 70%.(See APP. pg. D40, last paragraph under the title "Mystery Shopper Program." After discovery period ended and the settlement effort was proved unproductive, Defendant filed its Motion to dismiss Under Rule 12(b)(6) and Summary Judgment under Rule 56 of the federal Rule of Civ. Procedure. Defendant argued that all cause of actions stated by plaintiff's "Amended Complaint and Jury Trial" (APP. pg.

D204) namely *Discrimination on disability* under American with Disability Act (ADA) and the MGL 151B, (Count One); *Religious Discrimination* (Count 2); *Gender Discrimination* (Count 3); *Retaliation* Under Title VII and or MGL 151B (Count 4); Discrimination under Mass, Wage Law including (a) MGL ch.149 sec. §148 and (b) MGL c.136 §6(50) (Count 5), (Age Discrimination under 20 U.S.C. § 623 (Count 6) as well as the core cause of this litigation (Termination of Employment) is addressed here below as follows:

A. Respondent OTG Management, LLC. Could not Have Prevailed In its defense Against Plaintiff's Termination and other Claims Had The District Court NOT Overlooked Plaintiff's Exhibits.

(i) OTG, LLC's Employee Manual.

The Plaintiff/Petitioner's termination of employment was grounded on one and only one reason which is *"Poor job Performance, 3 Below Average Failing Secret Shooper Scores"*, See. App. pg. D149. OTG Management LLC., also alleged that the termination action was carried against the plaintiff per the Employee Manual it provided to the plaintiff on the day of hire and orientation on August 4, 2007. See, also Declaration of Michael Murphy, VP of Operation at App. pg. D21, §5 and §8; and see the actual manual plaintiff received at App. pg. 106-119, See also such undisputed fact from Defendant OTG Management, LLC's Memorandum of Law in support of Its Motion for summary Judgment, at App. pg. D1, 14 of section (ii), §2. The Employee Manual plaintiff received and signed on August 4, 2007, however, has no Mystery Shopper provision and therefore, employer can not terminate my employment based on this document.

Realizing that plaintiff was terminated by the Employee Manual which has no provision about Mystery Shopper program and, notwithstanding the above and earlier position , OTG Management established new employee manual and claimed that it had provided to the plaintiff on September 19, 2007. However, plaintiff have not received such employee manual even though I received three page document titled ***"Equal Employment Opportunity Policy and Policy Against Harrasment"*** See, App. pg. D224-226 which I received and signed on 9/19/2007 ibid. at App.pg. D227. **Please Note** that at the signature page of document page number D227 and at the very top with the title, it indicate that the signature is for receiving this three page document, not the new Employee Manual. Had I receieved the new or amended employee Manual, I should have been required to sign on the blank space indicated at page 50 the new employee manual, but has not signed. When I received the employee manual on August,2007, I have signed on an identical page as seen at App. pg. 106 – **119.**

Defendant OTG Management, LLC. fraudulently used the signature I put for receiving a non-mystery shoppers manual (D106-119) to the newly fabricated manual with mystery shoppers provision (D32-53) and attempted to assert that plaintiff was terminated for violating the company policy accordingly. Plaintiff/Petitioner never knew such new document until after termination and on discovery phase in federal court proceeding.

The new Employee Manual: - The newly presented Employee Manual (even provided to plaintiff and received, this document will not be the ground for termination of employment due to the very word of the provision. The document only states that the

mystery shopper program was for training and performance evaluation with reward of moneyfor employees who score from 85-100 % but also to provide to employees who performed less than 70%. The manual nowhere suggest that employees to be terminated for any substandard performance. **See App. pg. D32, 40, ¶ 7.** The district court purposely avoided to refer to this manual and only accept individual mystery shoppers report indicated at App. pg. D54, D56 and D58 and concluded employer's action was nondiscriminatory business decision. He was wrong.

(ii) Affidavit of Dawit Gurara

Mr. Gurara is /was my co-worker and he was not Cashier but a Merchendizer aka Utility Worker whose job was to transport food items and soft drink from the cooler room (warehouse) and distribute to each of OTG's sales counter one of which is my place which I work as a Cashier. Although Mr. Gurara's workshift is overnight, he is the first morning crew who bring merchandise and display in the cooler behind the counter of the cash register. He knows how OTG operate its business as his affidavit indicated at APP. pg. D130. Because Mr. Gurara's affidavit reveal several facts that defendant falsely asserted, the *district court lightly mentioned the existent of the document but have not seriously review such vital document* and Defense counsel never addressed it in any of his writing. Because un-rebutted affidavit is deemed as admitted, the defendant's argument on issues surrounding this affidavit should have been rejected.

Mr. Gurara's affidavit, taken together absolute contradiction to ORG's position, as for example, when plaintiff claimed that soon after I was terminated, a male employee was hired to replace my position but defendant falsely asserted four women were hired in

my place, see Mr. Murphy's Declaration, App. pg. D21, ¶22. However, Mr. Gurara's affidavit reveal that the person hired to replace me was a male employee, called Mitku Melkamu. See, Affidavit of Mr. Gurara at App. pg. D130, and see also Mr. Melkamu's job evaluation by Mystery shoppers as he was working at plaintiff's former position as indicated at App. pg. 104. Mr. Gurara's Affidavit also refute the Defendant's false assertion claiming that OTG has nine female employees as a utility worker as the job can be performed by male and female employees. See Murphy's Affidavit, ibid. at ¶21. However, OTG has never had female utility employees as I knew from my hire in August 2007 to my termination in November 2009. Mr. Gurara reveal that only four *male* employees are what he knew and no female employees work as a Utility/Merchendizer.. See Mr. Gurara's Affidavit at 130, 131 ¶6. The district judge never mentioned such testimony to the effect of refuting defendant's false argument.

(iii) Plaintiff's other exhibits:

The other exhibit the court didn't pay attention is the letter my husband wrote to Mr. Khayat complaining that employees work hour was reduced as employees required to leave early.(see APP. pg. 145, page 2, top paragraph.) Because the judge did not know this situation, the document I present proving that I have worked more than the normal hours was termed / stated just some hours picked up withen the pay period. The judge still in his wrong opinion because unless some situation compelled to stay and work, I leave whenever my work hours ended. picking any available extra hour as overtime was incorrect assumption, See the judge opinion in his memorandum of law at APP. pg. B46 than 8 hrs as to prove that worked on Sundays should not be requiredto shou

the worked hrs. must be full 8 hrs per day.Judge Woodlock's argument/analysis is not correct. See Memo. & Order at B46, ¶4

The Judge's Disparate Treatment Analysis.
See Memo. and Order, at App. pg. B43,

The disparate treatment claim was based on the differential treatment I, the plaintiff, claimed against the company because that for same and identical rule violation, OTG treated me less favorably than other equally situated employees. For example, a Cashier and a co-worker called Alemtshay Tsega, was not written-up when she was found sitting at workplace, See. APP. pg.D184 but I have received written warning (See App. pg D60) for sitting due to my preexisting leg injury starting from Ethiopia, (See APP. pg. D147). and (2) another similarly situated coworker and a Cashier called Ms. Endale was not written-up when she was found talking by her cell while working, (See. APP. pg. D188) but as I addressed my complaint to the state agency, I stated that I was terminated for ce terminated for cell conversation with my other co-worker, Joseph Temesgen, (See, APP. pg. D195). After termination, I was replaced by male employee called Meteku Melkamu, (See App. pg.104) After charge of discrimination was filed with the commission, I learned from the employer answering to the charge that the reason I was terminated was for *"poor job performance, 3 below average failing secret shopper scores' See APP. pg. D149)*

The more clear Disparate Treatment practice among its employees by OTG Management is that the company wrote and suspend Mr. Gifaw as from EEOC's decision at APP. pg.186 indicted. As can be seen, Mr. Gifaw received four different disciplinary

measures in which he signed ALL except one that led him to further confrontation. Mr Gifaw was counseling by his manager, not fired but choose to throw his hat at his manager and quit even the manager also said you are fired. To the contrary, as Judge Woodlock noted, petitioner received only one warning letter which has the petitioner's signature. The rest written warning I had and all of which I never know was recieverd after I filed the charge and therefore, terminating one employee for one offense but tolerating the other for four rule violation is cler violation and this court should see the differential treatment.

The district judge knowing from my disparate Treatment claim that I was differently treated under the employer policy but did not address the differential treatment between myself and another two co-workers even though my emphasis about disparate treatment claim was between myself and a male co-worker, Mr. Mulugeta Gifaw whose job performance history is indicated by the exhibit Petitioner's exhibit at App. pg. D186.

B. The District Court's Dismissal of The Petitioner's Disability Discrimination Claims and the Appeals Court's blanket Affirmance of the same is erroneous.

The District Court improperly granted Defendant's Motion for Summary Judgment on plaintiff's *Disability discrimination* by claiming that plaintiff has not provided **(a)** Medical Record from Ethiopian Medical Board, **(b)** that the plaintiff's injury at work can not constitute disability as if plaintiff had claimed disability for the work related injury alone but for "impairment" due to injury in my knee and, **(c)** the court like the defendant had mixed the two type of claims and unable to distinguished/separate the mixed element of the case "impairment" and the permanent injury, aka Osteoporosis. Contrary to the

defendant/court's claim, defense counsel had received the Ethiopian Medical record on March 12, 2014. see APP. pg. D159, 160 at Respose No.4. dispite the false claim advanced from to time.

The judge accepted the defendant's position by stating : *"I will strike certain exhibits not produced during discovery, specially Ms. Mekonnen's medical certificates from Ethiopia and the three sets of cell phone record.* ***Ms. Mekonnen herself admitted she did not provide these exhibits to OTG during discovery despite being requested to do so*** *(emphasis added)"* See, Memo. And Order, **APP. pg. B32, ¶4** This statement is untrue in its core and the judge simply borrowed the word of defendant's attorney but the Ethiopian Medical Certificate was produced to defendant two years before it filed its motion for summary judgment. The Medical Certificate defendant requested from plaintiff at discovery period on January 30, 20014, see, APP. pg. 151, ¶5. was produced on March 12, 2014 as is seen at **APP. pg.160, ¶4.** Defense counsl, however filed his motion and supported his motion by another motion to strike the Ethiopian Medical certificate which the court accepted as true and strike this vital document. The judge was misled by the exhibit defense counsel submitted to court after it deleted (redacted) the portion of my answer to the requested document as seen at APP. pg. 157, from answer 1-4. See Affidavit of Sean P. O'Connor, APP. pg. 155-158. Therefore, the district court's assertion stating "*Ms. Mekonnen herself admitted she did not provide these exhibits to OTG during discovery despite being requested to do so"* is untrue statement caused by defens counsel's unethical and immoral deception in misleading the court. See, Memo. And Order, **APP. pg. B32, ¶4.** To be sure, Compare again APP. pg.160, ¶4 (plaintiff's

production) and at APP. pg 155, ¶1-4) Defendant's deception. Also see further denial at at APP. pg. 222 fn. 28. **Question:** if counsel has not received the document as he claimed since March 3, 2014, (the day I produced the Ethiopian Medical Certificate) then why not counsel ask plaintiff to supplement rather than raising issues 2 years later ?

In this connection I can not pass without mentioning that the district judge misconstrued and misunderstood my earlier statement that I say I have not given the Ethiopian medical Certificate to any U.S. health maintenance organization bpth because it was from Ethiopia as well as it was also 18 yeard old document and can not be accessed from Health maintence organization in the U.S hospitals.However,*I never said nor had any reason to say that I did not produce despite requested to do so by defendant.* See, Memo. And Order, APP. pg. B32, ¶4.

The District Court's Dismissal of the Complaint on Religious Discrimination and The Appeals Court's Affirmance Was Erroneous

The District Court improperly granted Defendant's Motion for Summary Judgment on plaintiff's *Religious discrimination* by denying my own payroll record and time card to prove that I was forced to work *from employment to termination.* The district judge and the defendant agreed that the Plaintiff's religious discrimination was time barred for the claim that was before July 14 statute of limitation. Furthermore, both asserted that plaintiff has never worked a single Sunday after July 14, 2009 but when refuted by exhibit, the court side with OTG Managment, LLC. by reasoning that the six and seven hrs. I worked (other than M-F work schedule) are not full time work (he meant 8 hrs.) and, therefore, entered judgment against plaintiff. I think, the judge who denied

employee's own payroll record and time card is an absolute abuser of his discretion which the court of appeals has affirmed in a blanket statement.

As an initial matter this part of the claim was argued by defendant in uncontrollable lie from the beginning. As repeatedly mentioned, defendant flatly denied that plaintiff has never worked any single Sundays "*from my hire to termination* (rephrased) (See, Defendant's Memo. of Law in support of summary Judgment at App. pg. D11, last paragraph to D12 of top paragraph. When plaintiff presented irrifutable exhibit indicating that I was forced to work 20 Sundays, see exhibit APP. pg. D90-103 and D241-243,

About the exhibit presented, Defendant alleged that the time period covered by these exhibits are time-barred and will not defeat the summary judgment sought earlier. Despite defendant's unwillingness to produce the same type correct time card cited above (D90-APP. pg. D90-103 and D241-243,) Defendnat did not cooperate and the court also denied my repeated motion to compelling discovery as indicated on the docket sheet of APP. pg. B16, Dkt. no.62, B18 Dkt 90, 95 as well as repeated oral request whenever appear at court scheduled motion hearing. For this reason, I was compelled to find the proof that I was forced on other Sundays after the july 14, 2009 statute of limitation period. As calculated in Begashaw Ayele's Affidavi, page11, C (a) discovered that for the pay period ending September 6, 2009, I was making $726. 84 which is more than 51.48 (normal biweekly income was $675, and $726.84 minus $675.00 = $51.48. Similarly, For the pay period ending August 2, 2009, plaintiff also earned $736.47 which is also more than the normal biweekly income of $675 the difference of which is (736.47-675.00 =

$61.47). Concerning these extra income above the expected biweekly income, the district judge put his flawed (and even false) analysis as follows:

> " Neither [these extra income] suggests that Ms.Mekonnen worked a complete extra shift. Instead, Ms. Mmekonnen worked approximately an extra seven hours during the August 2, 2009 pay period and an extra six hours during the September 6, 2009 pay period" - See Memo & Order, at APP. pg. B46, ¶4

The above reasoning is more illogical and depraved as it was not supported by evidence. In fact, the judge's subjective opinion run contrary to the record. The record that the judge may not have seen is the September 3, 2007 letter that Begashaw wrote on my behalf to my manager Walid Khayat indicate why plaintiff did not work the whole shift. That letter addressed certain complaint one of which was that many employees were told to leave early which makes the weekly or biweekly total work hrs low. My letter reads:

> "Thirdly, employees are repeatedly told to leave early without explanation and the supervisor misappropriated their tips." See at APP. pg. D145, pg. 2, top paragraph)

In addition, plaintiff had no practice to work 1-2 hrs extra hours in certain day or week period as was speculated by the district judge but work full schedule as the following chart demonstrated: The Source of the Chart is from Petitioner's large exhibits particularly from APP. pg. D90-D103 through 103.

Chart indicating that Petitioner Abeba Mekonnen Worked

Full day shift Other than the Regular 40 Hours

DocumtID Nos	Reg. Hrs Worked	O/T Hrs. . Daily	Work Day of the Wk.	Total Hrs. .	Remark if any
D-90	40	0.120	Sunday	8.11	
D-91	39.609	0.0	Sunday	7.39	
D-92	39.299	0.0	Sunday	8.03	
D-93	38.420	0.0	Sunday	8.09	
D-94	39.329	0.0	Sunday	7.55	
D-95	40	15.08	Sunday	7.46	
D-96	40	16.85	Sunday	10.05	
D-97	40	13.039	Sunday	12.46	
D-98	40	6.669	Sunday	7.53	
D-99	40	7.669	Sunday	7.56	
D-100	40	6.580	Sunday	8.11	
D-101	40	6.459	Sunday	7.50	
D-102	40	6.289	Sunday	7..50	
D-103	40	7.929	Sunday	7.54	

Please Note:- In his Memorandum and Order, at APP. pg. B46, the judge asserted that the extra 6 and 7 hrs. worked by plaintiff outside the M-F schedule can not prove that plaintiff worked on Sunday morning. How this question could be asked when employer's schedule indicate that plaintiff was off on weekends? See, Defendant's Exhibit at APP. pg. D62-D83.

Second, if the court believe that plaintiff had proved by direct evidence as to my forced Sundays work as indicated from APP. pg. 90-103, why not he believed the same may happened in 2009 instead of by speculating the extra incom for 6 and 7 hrs. work may not for the Sunday work.

Thirdly, if plaintiff was not forced to work on Sundays, the total income from January1, 2009 to my termination would be only $15,525 ($9.00/hr. x7.5/day x 46 weeks). But the income reported in my W2 (2009) is $17,022.26. So where the extra $1497.26 comes from unless I was forced to worked on Sundays. ~~Above all why the court below refused my request my payroll and time card similar to the~~ exhibit APP. pg. 90-103 instead of believing the fake and fabricated exhibit seen at APP. pg. D62-D83.

demonstrated: The Source of the Chart is from Petitioner's large exhibits particularly from APP. pg. 90 103 through 103.

D The District Court's Dismissal of The Petitioner's Gender Discrimination Claim and the Appeals Court's Affirmance was Erroneous.

The district court also improperly dismissed the plaintiff's *Gender Discrimination* claim by assuming and accepting defendant's position that (a) the termination issue based on gender discrimination was time barred and, (2) that the transfer issue was also time barred. The two cause of actions can not fail for untimely reason because (1) the transfer issue was a discret act and also time barred raised to alleviate the disability problem where the work environment was also pervaded by hostile environment. The hostile environment tradation at OTG as well as the manager of the store himself is difficult to work with as one employee, for example throw his hat and quit/terminated. See APP. pg. DS186 (a case that was before the federal administrative agency EEOC. as previously stated that I was prohabited not to have my lunch break one and ond and half befor my shift ended. and had I been transferred I was intitled to receive more money as the Utility worker hourly wage was higher than my Cashiering position. and, (2) Concerning my termination it was clear that I was terminated for having Phone conversation about the company's business with a male co-worker, Yoseph Temesgen, but he was retained and still is/was working until the store relocated somewhere outside the Boston Logan airport area. Therefore, this complaint was not time barred nor fail to exhaust administrate

proceeding. This gender discrimination claim is part of the other gender discrimination in which I alleged and proved that I was terminated for few rule violation while another co-worker, Mulugeta Gifaw was tolerated for six company rule vioation but still retained until he was fired for throwing his hat at his manager, **Ibid.**

E The District Court's Dismissal of The Petitioner's Age Discrimination Claim and the Appeals Court's Affirmance was Erroneous.

The District court like the other claims before him has dismissed the Petitioner's Age discrimination claim and defendant's argument was not supported by legal reason but technical. Instead of articulating their reason in discriminating or not, like the Wage law claim it argued in the proceeding that plaintiff has not the filing of administrative charge before filing the lawsuit in court. The defendant's argument which look like true in the face, however, was false. In the record prepared by Massachusetts Comission Against Discrimination, "MCAD"[19] the plaintiff's cause of action was listed only as creed, sex and disability and **"other"** See APP. pg. 195.only. Because the complaint drafted by the commission did not include the word "age" defendant ask the court to dismiss the complaint and the court did dismissed. Likewise, defendant in

---

[19] *Under Massachusetts MCAD practice (or law?) claimant only required to fill by hand a simple form to identify the complainant but the acyual complaint that the commission will send to employer is always written by the commission's personnel. Because many people who brought charge of discrimination are challnging by their opponent, court in massachusetts are very libral to interpret ambigious word towards the plaintiff because plaintiff was not the one drafted his complain in the government office. Therefore, the specific cause of action that was mentioned Age or any other claim had been construed as plaintiff drafted his/her complaint for federal/state court. The plaintiff's complaint indicated at APP. pg. 204*

dismissed. Mass. wage claim also raised similar, if not identical claim alleging plaintiff has not administrative decision and also ask the court to dismiss the complaint and the court dismissed.

The district judge who is interested searching *fault* than facts on the record dismissed the complaint. The court dismissed the complaint by never look the MCAD complaint as was written by the commission's personel and by not paying attention to the right to sue letter by the Massachusetts Attorny General thus whether the law said private citizens can not bring charge against empoyer and if the AG authorized the plaintiff to bring private law suit, the court shoule the exhibit and decide this claim to go forword. This was intentional without a question.

In any case, the plaintiff's lawsuit is in proper setting because plaintiff filed the wage law claim before the AG office and the right to sue letter was issued for me as indicated at APP. pg. 231. This meant that private people also can file the suit. This law suit was probably late when it is viewed from the statute of limitation point of view but as the Ledbetter Fair Pay Act negate the limitation period, this claim as well as the rest should be viewed under the new law.

F. OTG's Retaliation Against Petitioner

The District Court also improperly granted Defendant's Motion for Summary Judgment on plaintiff's *Retaliation* claim by ignoring the various mistreatment the

supervisor (Lilly Molla) and the Manager Walid ("William") Khayat issued two unwaranted Written Warning that one was false and the other was in violation of the disability law which was already refuted but the district judge did not indicate whether he rejected such unwaranted letter except saying *"Ms. Mekonnen's signature does not appear on in this written warning"* See, APP.. pg. B31, No , 2¶. Because *unwarranted* written warning can constitute adverse action, See, McKenzie v. Potterzie, CIV. A.02-10727-DPW, 2004 WL 2004)1932766 (D. Maass.) The case cited her is the same case defense counsel used in opposing Appellant's brief at the courts of appeal and yet the judge chose to ignore that the unwarranted written warning to constitute adverse action.

Couple with this scenario and the fact that plaintiff's various mistreatment such as not permitting me to take my lunch break until one or one and half hour before my shift ended, refused me to assign replacement someone until I go and back to the woman's room, stealing my (and other cashier's tip) and accusing me or every trivial issue which all constitute retaliation as retaliation is construed very broadly according to this previous decisions.

Therefore, defendant's position that plaintiff's retaliatory termination can not be said without discriminatory animus. If an employer prohibit the taking of break byan employee within reasonable time but instead forced to take 1 or ½ before my shift ended is a punishment and no reasonable person can't said it is not punishment.

(G) **Blue Law MGL c.136 sec. (Count 5(2)**

This was the claim raised by petitioner to get the proper Sunday premium payment but defendant argued that a private party can not brought charge against OTG Management. Defendant also argued that the claim is closed by statute of limitation. The defendant's argument has no merit because plaintiff properly received the right to sue letter by the Massachusetts Wage and hour law office of the AG office of Massachusettess. See, APP. pg. D231. In short, the Ledbetter Act of 2009 will not allow this to be dismissed and appropriate should be compensated.

Because plaintiff properly exhausted administrative proceeding and recievd the Right to see letter, I have agreed (a) to bring lawsuit per My Sunday Premium pay Claim as per Mass. Gen. Law ch. 136 sec. §6(50) as stated in my Amended Complaint and Jury Trial."See APP. pg. D204, Count 5(2) of page 8; and (b) Even the court should not have dismissed the plaintiff's Religious and Retaliatory Termination claim because the claim also involve *compensation* for working on Sundays. In relation to my religious discrimination claim, plaintiff (despite defendant's false claim that I have not worked a single Sunday from employment to termination) I have proved that I have work Sundays but the court dismissed the claim by statute of limitation by ignoring the Fair Pay Act 0f 2009 that eliminated the affirmative defense of statute of limitation whenever compensation is involved. See the plaintiff's Sunday work that the court admitted that I have worked on sundays. See Memo. & of Order, at APP. page B30, ¶1.

As to plaintiff's forced Sunday work, the court recognized that plaintiff worked some Sundays in 2007, even though it downplayed in mentioning the 12 Sundays plaintiff worked in 2008 despite all the irrefutable fact were before him. As mentioned, Plaintiff not only indicated that I was forced to work on Sundays in 2007, but I also worked 12 Sundays in 2008 as indicated at APP. pg. D92-103. Armed with these evidences and other, plaintiff was attempted to litigate further to the point of wining the case but required by (judge Joseph L. Tauro), to discuss settlement and met with the defendant under the (supervision?) of a Magistrate judge (App. pg B13, dockt no.19/24) but the effort was not a success.

Subsequently the court again referred the case to another Law Firm, called Foley & Lardner, LLP. in which plaintiff's temporarily appointed counsel for settlement purpose had asked defendant to offer reasonable settlement amount but agree as Defendant were offering unreasonable amount with a hope that it will prevail on the plaintiff's Sunday Premium claim. See APP. pg. D232-233. [19] The district court dismissed the claim under F.R. Civ. P 12(b)(6) even though he knows full well it was not subjected for dismissal by statute of limitation under the Ledbetter Far Pay Act. Lastly while my former husband was hospitalized and when I have no one to assist me, another lawyer from a different Law firm had represented me but I terminated him for filing stipulated motion to dismiss the complaint because he reached settlement agreement with defendant **without** my consent or approval and signature, and therefore, I motioned the court to disapprove the settlement offer excused behind the scene because litigating

CONCLUSION

For the above stated reasons, the court should grant the petition for writ of certiorari. Petitioner had proved my case no matter how the lower courts had adversly decided on this case. Therefore, the petition not only be granted for the sake of setting binding precedents but because many employees are victim of Mystery Shoppers who come to the place of business seeking only fault on employees and write subjective report who even are not identified themselves to testify on what they wrote about.

Respectively Submitted

Dated 6/16/2021

X Abeba Mekonnen

Abeba Mekonnen, Pro Se
106 West Concord Street, Apt. No.1
Boston, MA. 02118
857- 318- 9697 /Msg thru, Daughter/
011-251-9112-53-598 Ethiopia (Temporary)