



**Ethics and Anti-Corruption Commission v Rambeka (Anti-Corruption and Economic Crimes Civil Suit E013 of 2021) [2023] KEHC 996 (KLR) (Civ) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 996 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E013 OF 2021**  
**EN MAINA, J**  
**FEBRUARY 16, 2023**

**BETWEEN**  
**ETHICS AND ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**  
**AND**  
**EVANS NYAOGA RAMBEKA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff is the Ethics and Anti-Corruption Commission, a statutory body established under the *Ethics and Anti-Corruption Commission Act*. It has filed this suit on behalf of the County Government of Kisii, pursuant to its mandate under Section 11(1) (j) of the *Ethics and Anti-Corruption Commission Act*.
2. The Defendant was at all material times employed in the County Government of Kisii as a Ward Administrator for Masige West Ward.
3. The gravamen of the Plaintiff's suit is that the Defendant's employment with the County Government of Kisii was based on forged academic certificates and that as a result, the Defendant illegally benefited from the County from salaries and allowances amounting to Kshs 3,162,452.90 paid to him for a period of 38 months starting January 21, 2014. It is the Plaintiff's case that the Defendant was charged and convicted with the *Penal Code* offenses of forgery, uttering a false document and obtaining by false pretenses and also providing information Contrary to the *Leadership and Integrity Act* in Kisii Chief Magistrates Court Case No 2 of 2018 Republic v Evans Nyaoga Rambeka and is therefore liable to compensate the County Government of Kisii. The Plaintiff seeks the following orders as reproduced from the Plaintiff:-



- a. A declaration that the Defendant's employment as a Ward Administrator by the Kisii County Government was fraudulent, illegal and void *ab initio* as it was secured using forged and altered documents.
  - b. A declaration that the Defendant ought not to have been paid salaries and allowances amounting to Kshs 3,162,452.90 by the County government of Kisii.
  - c. An order for payment of the sum of Kshs 3,162,452.90 fraudulently obtained by the Defendant as salaries and allowances in the course of his illegal employment.
  - d. Costs of and incidental to this suit.
  - e. Interest at court rates on (c) and (d) above from the date of receipt to payment in full.”
4. By a statement of Defence dated August 23, 2021 the Defendant traversed all the allegations made by the Plaintiff and urged this court to dismiss this suit with costs.

### **The Plaintiff's Case**

5. The Plaintiff called four witnesses who testified as follows:
6. PW1 Maureen Nekesa Bosolo testified that at the material time, she worked at Kenya Institute of Management as the Head of Examination Section. She oversaw examinations for end of semester for all the 19 branches and that included setting, marking, moderation and issuance of transcripts and certificates. She also undertook verification of the certificates for the institute. She stated that she received a request from the Plaintiff commission to verify whether a certificate in Human Resource Management and a Diploma in Human Resource Management issued by the institution were genuine. She was also required to confirm whether the Defendant sat for a Diploma in Human Resource in that institute in the year 2010 as shown in the Certificate No 8xxx; also whether he obtained a Certificate in Human Resource from the Institute in the year 2008 as stated in a Certificate No 47xxx. She produced the request in evidence Exhibit P1. She testified that she obliged and confirmed that the certificates were not genuine and were not valid documents of the Kenya Institute of Management (she produced the response as Exhibit P2.). She testified that the genuine holders of the certificates bearing No 8xxx and No 4xxx were Fransisca Kerubo Ochwangi and Loise Muringo Kabubi; that the certificates in the name of Evans Nyaoga Rambeka could not and were therefore not genuine. (She produced letters Exhibit P3 and Exhibit P4 to that effect.)
7. PW 2 Linnet Nyanchama Onyambu testified that she was employed as the Deputy Director- Human Resource in charge of the payroll at Kisii County Government since April 2019; that she implemented the County Public Service Board decisions, County Human Resource Advisory Committee decisions and third-party requests. She testified that the Defendant was an employee of the County Government of Kisii and that he received salaries from the County Government from February 2014 to March 2017. She produced a list of employees including the Defendant, who were initially for 3 months paid through vouchers as they had not acquired personal numbers (Exhibit 7). She stated that, however, from May 2014 up to March 2017 the Defendant was paid through the payroll. She produced the payslips for the period May 2014 to March 2017 (Exhibit P8.) and confirmed that in total the defendant received a sum of Kshs 3,162,452.90 from the County Government, paid through his account held at the Family Bank and later at Chase Bank. She identified the bank statements evidencing the payments into the accounts as (MFI 10) and (MFI 11) respectively. The statements were subsequently produced in evidence by the investigator (PW4) as Exhibit 11 and 12. Upon cross examination, PW2 testified that she paid the Defendant for 38 months based on the following documents which were in the Defendant's file: letter of appointment, authority from the Kisii County Public Service Board to



- recruit, acceptance letter, reporting letter, bank details, national ID, birth certificate and copies of academic certificates.
8. PW3 Johnson Masenge Otenyo testified that at the material time, he was working at the Kisii County Government as a member of the Public Service Board. That he worked in that capacity from July 2013 to the end of June 2019. His duties included recruitment of the employees in the County, assisting the County Government in review of policies involving the public servants in the County. He testified that he participated in the process for the recruitment of the Defendant following an advertisement in the newspaper for various positions including that of the Ward Administrators. He stated that once the applications were received they were recorded in a register which served as proof that the person had applied. It was his evidence that the Defendant applied for the position of Ward Administrator and his name appeared as no. 16 on the register (Exhibit 13). He stated that he was in the panel that interviewed the Defendant for the position and that when candidates attended the interview the interviewing panel developed minutes and produced those for the Defendant's interview as Exhibit 15(a) and (b). He confirmed that the panel first considered the academic qualifications as that was the minimum requirement. He stated that once the interviews were concluded then the Board as a whole would meet and select the most qualified for appointment to the position as evidenced by Exhibit 16. The names of the successful candidates were then submitted to the County Secretary for appointment Exhibit 18. It was his testimony that no appointment letters were issued without following this process. He testified that whereas the Governor of the County could appoint certain officers, appointment of Ward Administrators was not within his jurisdiction.
  9. PW4 Jackson Gichuki Mwai testified that he is an investigator with Ethics and Anti-Corruption Commission appointed under Section 23 of the *Anti-Corruption and Economic Crimes Act 2003*; that the Commission received a letter dated December 20, 2016 by a member of the public which raised a complaint that Evans Nyaoga Rambeka, an Employee of Kisii County Government at the time, presented fake academic Certificates for employment in the County for the position of Ward Administrator; that on January 17, 2017 the Head of the Commission in South Nyanza Regional Office assigned him to conduct investigations into the allegations in the letter (EXB17). He stated that the qualifications for the position held by the Defendant included a requirement that one was to be a holder of a Diploma with five (5) years experience in Administration and Management and a first degree from a University recognized in Kenya; that the Defendant applied and was interviewed on November 29, 2013; that he retrieved an application for employment Form PSC2 dated January 27, 2014 which was signed by the Defendant from the Defendant's personal file wherein the Defendant had indicated that he had annexed a Diploma in Human Resource certificate from the Kenya Institute of Management, a Certificate in Human Resource Management from the same institution, a KCSE Certificate with a Mean Grade D+ showing that he attended Borangi Secondary School SDA and a KCPE certificate (produced as Exhibit 19). There was also a Curriculum Vitae (CV) in which he had undertaken his KCSE between 1999 and 2004 (the CV produced as Exhibit 20).
  10. PW4 testified that in the KCSE Certificate S/No 2630xxx which he retrieved from the Defendant's file and which he produced as Exhibit 21 was verified as genuine by the Kenya National Examination Council (KNEC). However, the Defendant's Certificate in Human Resource Management S/No 47xxx from Kenya Institute of Management and the Diploma in Human Resource Management S/No NCL 88xxx which the Defendant had applied to secure the employment were verified by the concerned institution and found to be forgeries. That vide a letter dated November 20, 2012 by the Kenya Institute of Management confirmed that the Diploma in Human Resource Management S/No 88xxx belonged to Loise Muringo Kabubi and not the Defendant while certificate S/No 47xxx which was uttered by the Defendant was in fact not a certificate in Human Resource but a Diploma in Human Resource Management belonging to Fransisca Kebubo Ochwangi. PW4 testified that upon



establishing that the Defendant had uttered the forged documents to the interviewing panel and to the Human Resource Manager he recommended that the Defendant be charged with six counts of the offence of forgery one for each certificate, two counts for uttering a forged document, one count of providing false information and one for obtaining money by false pretenses. He testified that the Defendant was convicted and sentenced to a total fine of Kshs 500,000 (he produced the judgment as an exhibit (EXB 36)). He asserted that the Defendant gained undue advantage over the other applicants to get employment from the Kisii County Government as a Ward Administrator and it was not morally acceptable for one to gain employment or a benefit through fraudulent means. He clarified that however the Defendant's performance while he held that office was not part of the matters that were under investigation. The specific focus was on forgery of the academic certificates ex B 5, 6.

### **The Defendant's Case**

11. DW1: Evans Nyaoga Rambeka testified that at the time of his employment, he held a D+ O'level certificate; that he qualified at Borangi SDA Secondary School; that he did not pursue further education or any professional courses; that it was Hon Ongwae, Governor of Kisii County, who secured his employment as a Ward Administrator; that he never personally applied for the job, or uttered the impugned certificates; that he attended the interviews with six other candidates and was appointed and deployed to Masige East Ward where he reported on March 30, 2014. He stated that he worked at Masige East Ward until 2015 and was responsible for coordinating the County Government policies and there was no complaint that he did not perform his duties well. He stated that thereafter he was deployed to Sensi Ward until 2016; that there was no query about his competence or neither did he face any disciplinary procedures and that he resigned in 2017 to vie for Masige East Ward, but lost the election. He admitted that he was tried for the offences referred to by the Investigating Officer (PW4) and was convicted and sentenced. He admitted that he paid a fine of Kshs 550,000/=. He however contended that the County Government was not entitled and was not justified to claim the salaries paid to him as he had earned/worked for the same.

### **Issues for Determination**

12. Counsel for the parties summed up their cases through written submissions. I have considered the submissions and evidence by both sides carefully and in my view the following issues arise for determination:
  - a. Whether the Defendant's employment by the Kisii County Government as Ward Administrator was fraudulent and illegal
  - b. If so, whether the payments/salaries received by the Defendant as a result of that employment ought to be recovered from the Defendant or any other person
  - c. Who shall bear the costs of this case?

### **Analysis and Determination**

#### **Whether the defendant's employment as ward administrator in Kisii County Government was fraudulent and illegal**

13. As per the judgment produced in this case as Exb P36, the Defendant was charged, convicted and sentenced for the offences of forgery, uttering a false document and obtaining by false pretenses under the Penal Code in Kisii Chief Magistrates Court Case No 2 of 2018 Republic v Evans Nyaoga Rambeka. The charges concerned the certificates which in this case, it is alleged he used to obtain employment as Ward Administrator at the County Government of Kisii. The proceedings herein



are civil recovery proceedings brought by the Plaintiff on behalf of the County Government of Kisii pursuant to the Commission's mandate under Section 11(1)(j) of the [Ethics and Anti-Corruption Commission Act](#). Sections, 51 and 52 as read with Section 53(3) of the [Anti-Corruption and Economic Crimes Act](#) also gives the commission the mandate to recover funds on behalf of public bodies. The aforestated Sections state:-

“11(1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—

...

(j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

51. Liability for compensation

A person who does anything that constitutes corruption or economic crime is liable to anyone who suffers a loss as a result for an amount that would be full compensation for the loss suffered.

53. Liability – miscellaneous provisions

(3) An amount for which a person is liable under section 51 or 52 to a public body may be recovered by the public body or by the Commission on its behalf.”

14. Having considered the evidence and submissions laid before this court I am satisfied that the first issue was proved against the Defendant on a balance of probabilities. To begin, with the Defendant admits that he did not appeal the judgment wherein he was convicted on all the six counts touching on forgery and uttering the impugned certificates. The conviction is therefore conclusive evidence not only that the certificates were forgeries, but also that he was also only culpable for the forgery and for uttering them to the Kisii County Government as proof of his academic qualifications. The court also found him culpable for providing false information contrary to Section 47 of the [Integrity and Leadership Act](#). Section 47A of the [Evidence Act](#) states: -

“47A. Proof of guilt.

A final judgment of a competent court in any criminal proceedings which declares any person to be guilty of a criminal offence shall, after the expiry of the time limited for an appeal against such judgment or after the date of the decision of any appeal therein, whichever is the latest, be taken as conclusive evidence that the person so convicted was guilty of that offence as charged.”

15. See also the case of [Ethics and Anti-Corruption Commission vs Mary Ngechi Ngethe](#) [2021] eKLR where citing in the case of [Captain Moses Kariuki Wachira v Joseph Mureithi Kanyita & 3 others](#) [2013] eKLR with approval, the court stated:-

“The fact of the convictions and the essential findings upon which the convictions were based, determined beyond a reasonable doubt by a court of competent jurisdiction, are to be afforded a high degree of deference. They are not subject to re-litigation. The non-essential



findings, not held to the same standard of admissibility, are to be given some deference. Certainly, as a minimum, they provide prima facie proof of the underlying circumstances, and strong evidence would be required to refute those findings”.

16. For the record, the Defendant was found guilty and convicted of the following offenses in Kisii CMCC No 2 of 2018:-

Count 1: forgery of a document contrary to section 319 of the [penal code](#)

Particulars are that on or about March 25, 2010 within the Republic of Kenya with intent to deceive, forged a document namely Diploma in Human Resource Management certificate No NCL 8xxx in the names Evans Nyaoga Rambeka purporting it to be a genuine document issued by Kenya Institute of Management.

Count 2: forgery of a document contrary to section 349 of the [penal code](#).

Particulars are that on or about September 18, 2008 within the Republic of Kenya, with intend to deceive, forged a document namely certificate in Human Resource Management certificate No NCL 47xxx in the name Evans Nyaoga Rambeka purporting it to be a genuine document issued by Kenya Institute of Management.

Count 3: uttering a false document contrary to Section 353 as read with Section 349 of the [penal code](#).

The particulars are that on January 28, 2014 at Kisii County offices within Kisi County, knowingly uttered a false document namely a certificate in Human Resource Management Certificate No NCL 47xxx in the name Evans Nyaoga: Ramboka to Wilfred Nyamweya. Gutwa, the Director of Human Resource at the County Government of Kisi purporting it to be a genuine document issued by Kenya Institute si Management.

Count 4: uttering a false document contrary to Section 353 as read with Section 349 of the [penal code](#)

The Particulars are that on January 28, 2014 at Kisii County offices within Kisi County, knowingly uttered a false document namely a Diploma in Human Resource Management Certificate No NCL 8xxx in the name of Evans Nyaoga Rambeka to Wilfred Nyamweya Gutwa, the Director of Human Resource at the Kisi County Government of Kisi purporting it to be a genuine document issued by Kenya Institute of Management

Count 5: providing false information contrary to Section 46(1) (d) as read with Section 47 of the [Leadership and Integrity Act](#).

Particulars are that on or about January 27, 2014 at Kisi County offices within Kisi County, knowingly provided false information namely Diploma in Human Resource Management Certificate No NCL. 8xxx and certificate in Human Resource Management Certificate No NCL 17xxx in the name Evans Nyaoga Rambeka to a public officer Wilfred Nyamweya Gutwa, the Director of Human Resource at the County Government of Kisi purporting them to be genuine documents issued by Kenya Institute of Management.

Count 6: obtaining by false pretences contrary to Section 313 of the [penal code](#).

Particulars are that between March 2014 and March 2017 at Kisi County offices within Kisii County, knowingly with intent to defraud, obtained from the County Government of Kisi Kshs: 3,162,452.90 by presenting false documents namely Diploma in Human Resource Management certificate No NCL 8xxx and certificate in Human Resource Management



certificate No 47xxx to Kisii County Public Service Board purporting them to be genuine documents issued by Kenya Institute of Management and obtained employment as Ward Administrator Masige East Ward, a fact that he knew or believe to be false.

17. Further, it is my finding that even on the evidence before this court the case against the defendant was proved on a balance of probabilities. The Plaintiff adduced evidence to prove that whereas the impugned certificates bore certificate numbers for genuine certificates the qualifications therein belonged to persons other than the Defendant. Indeed, the genuine qualification in regard to what he represented to be a certificate in Human Resource was a Diploma which belonged to someone else. This evidence was adduced by none other than the custodian of those academic certificates at the Kenya Institute of Management where it was alleged they were issued and who therefore was conversant with the contents therein and hence competent to comment and attest to the same. The Defendant did not adduce evidence to rebut the evidence of that witness (PW1) instead choosing only to state that he never used the certificates. This court however finds that the Plaintiff also adduced evidence, and this court finds that evidence credible, that the Defendant in fact secured employment at the County Government of Kisii on the strength of those certificates. PW2, who I am satisfied is a reliable witness, told this court that he interviewed the Defendant based on those certificates and that the defendant emerged as the best candidate. The Plaintiff also adduced credible evidence through PW3 that the Defendant was in fact employed by the County as Ward Administrator. The witness referred to the impugned certificates as being part of the documentation which she used to include the Defendant in the payroll of the County Government. She also confirmed and produced documentary evidence to prove that in the course of that employment he was paid a sum of Kshs 3,162,452.90. This was not disputed by the Defendant who however seems to want to shift blame to the then Governor of the County Government of Kisii, Hon Ongwae. His allegation that it was the Governor who secured the employment for him using these documents was not however proved and the allegation cannot in any event withstand the weight of the evidence of the plaintiff's witnesses. Moreover, nothing prevented the Defendant from enjoining the Hon Governor Ongwae to these proceedings if indeed he had a case against him. Order 1 Rule 15 (1) of the [Civil Procedure Rules](#) provides for such joinder and states:-

“Order 1 rule 15

- (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party):
  - (a) that he is entitled to contribution or indemnity; or
  - (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
  - (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.”



18. It is my finding therefore that the employment having been secured through forged documents it was obtained fraudulently and hence any payments arising therefrom were illegal for all intents and purposes.

**Issue No 2 - If so, whether the payments/salaries received by the defendant as a result of the employment ought to be recovered from the defendant or any other person**

19. On this issue, Defendant argued that the documents were not uttered by him, but by a third party who secured the employment for him. However, the PW3 who served as a member of the County Public Service Board testified that the Defendant applied for the position, personally attended the interview and that he in fact presented the impugned academic certificates. PW3 produced the register for the applications and minutes of the interview as Exhibits 14 (a) and (b) and Exhibit 15 which indicated that the Plaintiff scored 80 marks and being the best candidate therefore his name was submitted to the County Secretary for appointment. The appointment was done through a letter produced as Exhibit 18. PW4 produced the plaintiff's appointment letter as Exhibit 23 and the acceptance letter as Exhibit 24. It is my finding that the Plaintiff having applied for the position, having attended the interview, having accepted the appointment and deployment and having drawn salaries for the position until he resigned, knowing very well that he was not qualified for the position and having been convicted for offences to that effect is liable to compensate the Kisii County Government for the sums received. It matters not that his resourcefulness and ability or ingenuity to do the job were not questionable. To say that he is not liable because his performance of the office proved him competent would be tantamount to giving an illegal contract the seal of approval. This court is not prepared to do that. Accordingly, I find that Issue No 2 is also answered in the affirmative and that on the whole, the Plaintiff has proved its case against the Defendant on a balance of probabilities.

**Costs**

20. Regarding this issue, the rule of the thumb is that costs follow the event. There is in any event nothing in this case that would warrant this court to determine otherwise and in the premises the Defendant shall bear the costs of the suit.

**Disposition**

21. Accordingly, judgment is entered in favour of the Plaintiff against the Defendant as follows: -
- a. A declaration be and is hereby issued that the Defendant's employment as a Ward Administrator by the Kisii County Government was fraudulent, illegal and void ab initio as it was secured using forged and altered documents.
  - b. A declaration be and is hereby issued that the Defendant ought not to have been paid salaries and allowances amounting to Kshs 3,162,452.90 by the County government of Kisii.
  - c. That the Defendant be and is hereby ordered to make payment of the sum of Kshs 3,162,452.90 fraudulently obtained as salaries and allowances in the course of his illegal employment.
  - d. That the Defendant shall bear the costs of the suit.
  - e. That interest on (c) and (d) above shall be calculated at court rates from the date of receipt of the monies until payment in full as prayed in the Plaint.

Orders accordingly.



**SIGNED, DATED AND DELIVERED VIRTUALLY**

**THIS 16<sup>TH</sup> DAY OF FEBRUARY 2023**

**E N MAINA**

**JUDGE**

In the presence of:-

Ms. Omwoyo for Danstan Omari for the Defendant

No Appearance for the Plaintiff

Court Assistant – Potishoi/Raymond

