



**Okello v Judicial Service Commission (Cause E807 of 2023)
[2025] KEELRC 2513 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2513 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E807 OF 2023
S RADIDO, J
SEPTEMBER 25, 2025**

BETWEEN

BENSON ONYANGO OKELLO CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

1. Benson Onyango Okello (the Claimant) was employed as a Clerical Officer by the Judicial Service Commission (the Respondent) in 2008, and was serving as an Accountant II/In-Charge Accounts at Keroka Law Courts by the time of separation in 2021.
2. On 4 October 2023, the Claimant sued the Respondent, alleging unfair suspension/termination of employment and violation of his constitutional rights.
3. The Respondent filed a Statement of Response on 20 January 2024, and the Cause was heard on 29 October 2024, 27 January 2025, 25 February 2025 and 7 May 2025.
4. The Claimant, an Assistant Director, Human Resources and the Director of Audit with the Respondent testified.
5. The Claimant filed his submissions on 20 May 2025, and the Respondent on 21 June 2025.
6. The Claimant identified the Issues for determination in his submissions as:
 - i. Did the Respondent follow due process in terminating the Claimant’s contract of service?
 - ii. Was there a valid reason(s) for terminating the Claimant’s employment?
 - iii. What reliefs is the Claimant entitled to?
7. The Respondent saw the Issues as:



- i. Whether the Claimant's termination was unfair?
 - ii. Whether the Claimant's dismissal was unlawful?
 - iii. Whether the Claimant is entitled to the reliefs sought?
8. The Court has considered the pleadings, evidence and submissions and isolated the questions for determination as examined hereunder.

Lawful Suspension

9. The Claimant conflated the lawfulness of his suspension with the question of unfair termination of employment, but in the view of the Court, it is a question which pleadings and evidence placed squarely at the discretion of the Court to examine.
10. The Respondent, through the Director, Human Resources, on behalf of the Chief Registrar, suspended the Claimant through a letter dated 16 October 2020.
11. The suspension letter referred to a Final Internal Audit Report at Keroka Law Courts, and the involvement of the Claimant in financial malpractices (details set out) and notified the Claimant of suspension pending finalisation of a disciplinary process.
12. The Claimant contended that the suspension was unlawful because it was carried out by an unauthorised officer, contrary to the applicable provisions of the *Judicial Service Act* and regulations, and that the Honourable Chief Justice did not conduct inquiries.
13. Further, the Claimant challenged the suspension on the ground that it was on nil salary and therefore punitive.
14. The Respondent did not directly traverse the Claimant's contentions on the lawfulness of the suspension, but its witness testified that inquiries were caused to be conducted by the Honourable Chief Justice before the suspension.
15. The Respondent asserted that the suspension of the Claimant was lawful and submitted that since the Honourable Chief Justice exercised disciplinary powers donated by the Respondent, then the Chief Registrar, in her capacity as the Secretary of the Respondent, communicated through the Director of Human Resources and Administration the decision of the Respondent to suspend the Claimant.
16. In its submissions, the Respondent asserted that the suspension complied with Regulation 17 of the Third Schedule to the *Judicial Service Act*, the Claimant was paid an alimentary allowance, and that the Chief Registrar merely communicated as the Secretary of the Respondent, the decision to suspend the Claimant (the case of *Benedict Abonyo Omollo v Judicial Service Commission (2015) KEELRC 1295 (KLR)* and *Nicholas Macharia Maina v Judicial Service Commission & 3 Ors (2025) KEELRC 686 (KLR)* were cited).
17. The Third Schedule to the *Judicial Service Act* makes provision for the Appointment, Discipline and Removal of Judicial Officers and Staff. Regulation 15 of the Schedule has delegated the powers of interdiction and suspension to the Honourable Chief Justice.
18. Under Regulation 17 of the Third Schedule, the power to suspend a judicial officer or staff is delegated to the Honourable Chief Justice in cases where the officer or staff has been convicted of a serious criminal offence, or disciplinary proceedings have been taken, and the Honourable Chief Justice is of the view that the officer ought to be dismissed.



19. Apart from the statutory delegation, the Respondent has the power to delegate some of its functions to its subcommittees or the secretariat.
20. Aspects of the delegation are found in the Human Resource Policies and Procedures Manual.
21. Under section D of the Manual, the Respondent has delegated some of its disciplinary functions over staff grade JS 9 and below to the Human Resource Advisory Committee.
22. Section D7.2.2 of the Manual allows the Honourable Chief Registrar to issue a show-cause letter.
23. However, under section D.7.5.2 of the Manual, the power to interdict or suspend is still reserved to the Honourable Chief Justice.
24. The Claimant herein had not been convicted of a serious criminal offence. The facts which could lay a foundation for the Honourable Chief Justice to come to the view that the Claimant ought to be dismissed had not been tested during a disciplinary hearing. The Claimant had not been given an opportunity to show cause by the time of suspension.
25. The Claimant's suspension was not under the hand of the Honourable Chief Justice.
26. Assuming that the Chief Registrar was communicating a decision of the Respondent to suspend the Claimant, the Respondent did not place before the Court any decision or resolution it made to suspend the Claimant.
27. There was no material placed before the Court that the suspension was on the say-so of the Honourable Chief Justice or the Respondent.
28. Under both the Third Schedule and the Human Resource Policies and Procedures Manual, the power to suspend is reserved to the Honourable Chief Justice on delegation.
29. This Court will, therefore, decline to endorse the decisions in the 2 authorities relied on by the Respondent.
30. The Court finds that the suspension of the Claimant was made and communicated by an unauthorised officer and thus unlawful.

Unfair termination of employment

Procedural fairness

31. The Claimant submitted that his dismissal was devoid of procedural fairness because the Honourable Chief Justice did not lay any charges against him as required by 25(1) of the Third Schedule to the *Judicial Service Act*; there was no adherence to Regulations 25(2) of the Third Schedule and that no investigative Committee as envisaged by Regulation 25(3) was appointed by the Respondent nor its report provided.
32. The Claimant cited *Muriuki v Judicial Service Commission* (2017) KEELRC; *Waka v Judicial Service Commission & 3 Ors* (2023) KEELRC; *Stephen Pareno v Judicial Service Commission* (2014) KECA 307 (KLR) and *Khaemba v the Supreme Court of Kenya & Ar* (2019) KEELRC 917 (KLR) as well as provisions of the *Judicial Service Act*.
33. The Respondent contended that it complied with all elements of statutory fairness in that, after inquiries in the form of an audit, charges were laid against the Claimant through show cause/suspension letter, the Claimant responded and was granted an opportunity for an oral hearing by the Human Resource Advisory Committee with liberty to present witnesses and be accompanied.



34. The Respondent also urged that the Committee recommended dismissal, a recommendation it approved on 24 June 2021 and that the Claimant's appeal was determined on 28 September 2021.
35. The Claimant was in grade JSG 6. Under section D7.2.2 of the Human Resource Policies and Procedures Manual, the Chief Registrar had the authority to issue a notice to show cause. Such a notice was sent on behalf of the Chief Registrar.
36. The notice instructed the Claimant to show cause within 14 days why he should not be dismissed from service on the ground of misconduct.
37. The Claimant responded on 30 October 2020, and on 15 February 2021, he was invited to attend a disciplinary hearing on 10 March 2021. The invitation letter informed the Claimant of the right to be accompanied and bring witnesses. The hearing was rescheduled to 9 March 2021.
38. According to minutes produced in Court, the hearing was held on 9 March 2021 before a Sub-Committee of the Human Resource Management Advisory Committee, and the Claimant attended. The Claimant attended the hearing.
39. The Sub-Committee recommended that the Claimant be dismissed from service.
40. The Human Resource Management Advisory Committee met on 23 March 2021 and adopted the Sub-Committee recommendation. The Minutes were confirmed in a meeting of the Committee held on 8 April 2021, and the Claimant was dismissed through a letter dated 8 July 2021.
41. The dismissal letter informed the Claimant of a right to appeal within 6 weeks.
42. The Claimant appealed on 17 August 2021. On 27 March 2022, the Claimant wrote to the Respondent seeking to know the fate of his appeal. He sent a reminder on 20 October 2022. The Claimant asserted that by the time he moved to Court, the Respondent had not processed the appeal.
43. The Respondent's Assistant Director for Human Resources admitted in his witness statement that by 28 September 2023, the appeal had not been determined.
44. Section 45(5)(a) of the *Employment Act*, 2007, obligates the Court to assess whether a dismissal was just and equitable on how the employer handled any appeal by the employee.
45. The Claimant appealed on 17 August 2021.
46. Despite asserting that the appeal was heard and determined by 28 September 2023, the Respondent did not place before this Court any evidence that the appeal had been heard and determined, and the Claimant was informed of the outcome.
47. The Court finds the Respondent's handling of the Claimant's appeal rendered the dismissal inequitable.

Valid and fair reasons for dismissal

48. Sections 43 and 45 of the *Employment Act*, 2007, demand that an employer prove that the reasons leading to a dismissal are valid and fair.
49. The reasons given for the dismissal of the Claimant were primarily financial malpractices leading to the loss of Kshs 18,985,574/-.



50. To discharge the burden of proving the reasons, the Respondent called the Director of Audit to testify. The witness stated that he led a team that conducted an audit at Keroka Law Courts, where the Claimant was the Accountant-In-Charge, and he produced a copy of the audit report.
51. According to the audit report, there was a failure to surrender revenue of Kshs 6,938,467/-; under banking of Kshs 10,305,963/-; under banking of deposits of Kshs 1,741,144/-; failure to account for deposits of Kshs 5,000,000/- and failure to account for 5 receipt books or avail them for audit review; plucked receipts among other malpractices.
52. According to the Claimant, the reasons advanced by the Respondent to terminate his contract were not valid or fair because there was no proof of any actual loss of money and that all the revenue was accounted for and that he based his reports from documents received from the station cashiers who handled the actual collection and receipting of revenue in terms of section 9.2.2 of the Finance Policy and Procedures Manual.
53. The Claimant also contended that the scope of work did not grant him an opportunity to detect any financial malpractices and that it was only in the course of the audit that he established a cashier had underbanked revenue and that he was not allowed to retrieve receipt books, which he alleged he could not account for.
54. The Claimant further asserted that a receipt book used to perpetrate fraud was used before he reported to the station.
55. The Claimant was the Accountant-In-Charge at Keroka Law Courts. He had supervision of cashiers. He stated in his written witness statement, which was adopted as part of evidence, that his duties included verification of payment vouchers, collation of financial estimates, determination of aggregate expenditure, supervision of revenue collection processes, control of expenditure, general accounting work and below-the-line group accounting.
56. Under section 9.2.3.6 of the Judiciary Finance Policy and Procedures Manual, the Claimant had the responsibility of preparing daily revenue collection and banking reports, Collection Control Sheets and Financial Order 17 for surrender to the Accounts Controller.
57. The Claimant also had the duty to verify revenue documents.
58. The Claimant had a general supervisory role over the cashiers at Keroka Law Courts. He had specific roles as the Accounts-In-Charge. These included reconciling revenue receipts and bankings. He had access to the bank statements.
59. The audit report presented in Court shows that there was a revenue loss or failure to account for revenue. Apart from the loss and failure to account, the Claimant clearly did not perform his specified roles as expected.
60. It, therefore, does not matter that the Claimant was not the actual receiver of the revenue or that there were weaknesses in the system, or that the actual loss was not proved. No such weaknesses were established in Court.
61. The Claimant was in pole position to detect any failure to account for revenue by the cashiers, if at all, through the control systems in place.
62. On the evidence on record, the Court finds that the Respondent had reasonable cause and proved the validity and fairness of such to terminate the Claimant's contract.



Remedies

Reinstatement

63. The Claimant prayed for an order of reinstatement.
64. An order of reinstatement can only be granted where exceptional circumstances have been demonstrated, but the Claimant did not draw the Court's attention to any exceptional circumstances. 3 years have also elapsed since the termination of the Claimant's employment.
65. Reinstatement would not be an appropriate remedy.

Compensation

66. The Respondent proved valid and fair reasons to terminate the Claimant's contract. But it did not get aspects of procedural fairness right.
67. Considering these factors, the Court is of the view that the equivalent of 3 months' gross salary as compensation would be appropriate (the monthly gross salary was Kshs 104,300/-).

Lost income to retirement

68. The Claimant did not lay an evidential, contractual or legal basis for this head of the claim.
69. And the Court can do no better than cite the Supreme Court of Uganda in *Bank of Uganda v Tinkamanyire* (2008) UGSC 21 that:

The contention that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law. Similarly, claims of holidays, leave, lunch allowances, and the like, which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred, are merely speculative and cannot be justified in law.

Loss of earnings during suspension

70. The Claimant pleaded for the award of loss of earnings for illegal suspension and dismissal. This head of the claim comprised special damages, but it was not pleaded with particularity as expected.
71. The Court concluded that the suspension of the Claimant was unlawful and, on this ground, the Court is of the view that he should be paid accrued salaries during the suspension.

Conclusion and Orders

72. The Court finds and declares that the Respondent proved valid and fair reasons to terminate the Claimant's contract, but the process was not fair.
73. The Claimant is awarded:
 - (i) Compensation Kshs 312,900/-
 - (ii) Full salaries during suspension
74. The award to attract interest at court rates from the date of judgment.
75. The Claimant has partly succeeded. He is granted costs on a half-scale.



DELIVERED VIRTUALLY, DATED AND SIGNED IN MERU ON THIS 25TH DAY OF SEPTEMBER 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Akanga Matende & Co. Advocates

For Respondent Issa & Co. Advocates

Court Assistant Wangu

