



**Mwega v Nairobi Water & Sewerage Co. Ltd (Employment and Labour Relations  
Petition E234 of 2023) [2025] KEELRC 2892 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2892 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E234 OF 2023**

**MN NDUMA, J  
OCTOBER 23, 2025**

**BETWEEN**

**LUCY WANJIKU MWEGA ..... PETITIONER**

**AND**

**NAIROBI WATER & SEWERAGE CO. LTD ..... RESPONDENT**

**JUDGMENT**

1. The suit is by an amended petition dated 18/12/2024 by the Petitioner against the Respondent seeking the following reliefs:-
  - a. A declaration that the Petitioner's disciplinary process particularly the notice to show cause and subsequent processes having been initiated without adherence to the Respondent's human resource manual and Articles 41 and 47 of *the Constitution* is a nullity.
  - b. A declaration that the Petitioner is in possession of a valid academic certificate save for the said forged certificate from Graffins College which is foreign to her.
  - c. An order of certiorari to quash the decision of the Respondent to initiate the Petitioner's said certificate on allegation of forgery.
  - d. Costs of the petition and interests thereon.
  - e. Any other further relief that this Honourable Court shall deem fit to grant.

**Facts**

2. The Petitioner was employed by the Nairobi City Council on 6<sup>th</sup> November 1998 as a Technician in Water and Sewerage Department. That the Petitioner used her academic certificates from Cursor Computer Bureau and the Kenya National Examination Council and Business Education Examinations result slips obtained way back in 1997.



3. That the Petitioner was then seconded to the Respondent company by a letter dated 22/4/2004 where she has continued to work till the date of termination.
4. That on 8/8/2023 the Petitioner was issued a notice to show cause on allegations that she had forged a certificate from Graffins College, which was used to obtain promotion.
5. That the Petitioner had during the tenure of employment studied and acquired other academic certificates from different institutions except for the alleged forged certificate which is not known to her.
6. That the Respondent did not follow clause 8.23.2.1 of the Human Resource Manual that guides disciplinary process which provides that in respect of cases of misconduct, the Director of Human Resources shall communicate to the corporate disciplinary committee and the union representatives and thereafter the Director of Human Resource shall forward the case to the security department for appropriate investigation.
7. That the submission to the disciplinary committee must be factual and complete and should among others include a report from the security manager on the findings of the investigations.
8. That no investigations were conducted and so no investigation report exists.
9. That on 17/8/2023, the Petitioner responded to the notice to show cause denying having forged the alleged certificate. On 28/9/2023, the Petitioner was summoned to a disciplinary hearing to be held on 13/10/2023. That he was never given the alleged forged certificate at the time of attending the disciplinary hearing nor was she given any investigation report.
10. On 13<sup>th</sup> October 2023, the Petitioner attended the disciplinary hearing and reiterated the contents of her written response to the notice to show cause.
11. That the Petitioner was not paid salary from August 2023 despite having worked the entire month and subsequent month and was only paid house allowance occasioning the Petitioner a lot of financial hardship.

### **Violations**

12. The Petitioner alleges violation of clause 8.23.1.1 of the Human Resource Manual and Articles 41 and 47 of *the Constitution* stating that the administrative action was not factual, fair and just.
13. The Petitioner also alleges violation of Articles 41 of *the Constitution* stating that failure to follow its own internal manual amounted to unfair labour practice hence the prayers sought.

### **Cross – petition by Replying Affidavit**

14. The Respondent/cross Petitioner alleges that the Petitioner does not hold the requisite academic and professional qualification to hold public office, was irregularly appointed into office whereupon she was subsequently re-designated, promoted and seconded.
15. That in seeking employment and said redesignation, advancement and promotions, the Petitioner used a forged certificate in telephone operations purporting that it was issued by Graffins College, Nairobi which certificate qualified her for elevation to the position of Senior Telephone Operator.
16. That in furtherance of constitutional values and principles under chapter 6 and 10 of *the Constitution* and a directive from the Public Service Commission (PSC), the Petitioner conducted an audit to authenticate its employees academic and professional certificates.



17. That the Respondent presented the certificate of Graffins College for confirmation and the college denounced the certificate and reported it was a forgery. The college stated that the Petitioner had not been a student at the college.
18. That by presenting a fake certificate, the Petitioner breached Articles 10, 73(i) (a) (iv), 73(2) (c) (i) and 73(2) (d) of *the Constitution* and section 8 & 13(1)(a) and (g) of the *Leadership and Integrity Act*, 2012.
19. That the Petitioner had also violated section 19 and 22 of the Public Officers, Ethics Act of 2003.
20. That the provisions of Article 75(2) (a) and (b) of *the Constitution* allow for disciplinary action against the Petitioner and removal from offices as a public officer.
21. That the Petitioner had committed gross misconduct under section 44 (3) and (4) of the *Employment Act* 2007 and the termination was lawful and fair.
22. That the Respondent had initiated internal disciplinary proceedings against the Petitioner following receipt of report from Graffins College in terms of clause 8.23.2.1(viii) of the Human Resource Policy and Procedure Manual and the contract of employment.
23. That in her letter dated 17/8/2023, the Petitioner admitted having submitted the forged certificate. That the Petitioner later attended the disciplinary hearing on 13/10/2023 before the Respondent's Corporate Disciplinary Committee where she admitted that she had submitted the forged certificate but sought forgiveness.
24. That upon hearing the Petitioner, the Respondent's Corporate Disciplinary Committee considered the presentations, the admissions by the Petitioner and other evidence available to find the Petitioner guilty of breaching clause 8.23.2.1 (viii) of the HR and procedure manual and recommended summary dismissal of the Petitioner who was accordingly dismissed on 8/11/2023.
25. That the disciplinary process complied with the provisions of the *Employment Act* (41, 43, 44 & 45) and Article 75(2) (a) and (b) of *the Constitution*.
26. That the Petitioner has since employment received Kshs. 18,940,390.30 from public coffers, unlawfully using false certificate and the cross Petitioner/ Respondent prays for orders that:-
  - a. A declaration that the employment, re-designation and subsequent secondment of the Respondent to the Petitioner was tainted by fraud and misrepresentation and therefore, unlawful and invalid.
  - b. A declaration that the Respondent's employment being unlawful, her purported rights under the irregular employment cannot be enforced by this court, as sought in her petition.
  - c. A declaration that the Respondent is not fit to hold public office and therefore disqualified under Article 75(3) of *the Constitution* of Kenya.
  - d. An order that the Respondent refunds the Petitioner Kshs. 18,940.390.30 obtained unlawfully from the Petitioner.
  - e. Interest on the amount in (c) above until full payment.
  - f. An order for costs and
  - g. Any other order(s) this Honourable Court shall deem just



## Reply to the cross-petition

27. The Petitioner filed replying affidavit and submissions to the cross-petition in which she denied all particulars of cross-petition and puts the cross-petitioner/Respondent to strict proof thereof. The Petitioner in particular denies knowledge of the alleged forged certificate from Graffins College. Insists that same was never shown to her and adds that she did not acknowledge its existence or admit having presented it to the cross-petitioner/Respondent. The petitioner denies having sought for forgiveness from the Respondent.
28. The cross-petitioner/Respondent filed a further affidavit dated 15/4/2025 joining issues and denying the contents of the petition and the replying affidavit to the cross petition and puts the Petitioner to strict proof thereof.

## Determination

29. The court has considered all the deposition by the parties and the written submissions and has delineated the following issues for determination.
  - a. Whether the petition has merit.
  - b. Whether the cross-petition has merit
  - c. What reliefs if any should
    - i. be awarded to the Petitioner
    - ii. be awarded to the cross-Petitioner
30. The court has observed the alleged forged certificate from Graffins College awarded to the Petitioner. The certificate is in recognition of the Petitioner having satisfied the requirement of the board of examiners in a course of “Telephone Operator from January to July 2000.” The certificate is dated 25<sup>th</sup> July 2000. The cross-Petitioner/Respondent has no issue with all other certificates and credentials of the Petitioner which the petitioner relied on to be employed and promoted to various positions from the year 6<sup>th</sup> November 1998 by the then Nairobi City Council as a Technician in Water and Sewerage Department and seconded to the Respondent company vide a letter dated 22<sup>nd</sup> April 2004 where the Petitioner continued to work until the date of summary dismissal. The Petitioner at the time earned Kshs. 139,477.00.
31. The contract of employment presented before court by the Respondent dated 15<sup>th</sup> September 2005, is in respect of the position of Data Entry Clerk at the Respondent’s company. The Petitioner was placed on probationary period for six (6) months.
32. The Respondent produced a letter dated 14<sup>th</sup> June 2001 in which the Deputy General Manager of the Respondent wrote to the staff committee stating that the Petitioner and one Rahab Maina Kamotho had been performing the duties of Telephone Operator in the department switch board since 1999 as Technician III salary scale 16.
33. The Deputy General manager recommended to the committee to consider redesigning the two officers to the position of senior Telephone Operator salary scale 16. The Deputy General manager did not attribute the recommended redesignation to receipt of a certificate in Telephone operation.



34. The Respondent submitted a circular from the public service commission dated 19<sup>th</sup> October 2022 which directed all authorized officers to authenticate academic and professional certification in the public service. The directive was specific as follows:-
- “to undertake an audit of academic and professional certificates in all newly appointed officers in the last ten years in Ministries, Departments and State Corporations and submit a report of the exercise by 31<sup>st</sup> January 2023.”
35. The Petitioner was 1<sup>st</sup> employed in 1998 and redesignated Senior Telephone Operator in the year 2005, about 18 years from the date of the aforesaid circular. The Respondent does not explain special circumstances which warranted the Respondent to require authentication of Petitioner’s certificate contrary to the directive by PSC introduced before court by the Respondent.
36. Clause 4.110.2 of the Respondent’s HR, procedure manual titled “promotion/advancement procedure” provides that:
- “Promotion involves the advancement of an employee from one job category (rank) to another with more responsibilities and authority. Promotion occurs when vacancies exist and the appointing authority fill the vacant position by appointing an employee already serving in the organization in a lower grade. Promotion is based on evaluation of current performance and of the staff members demonstrated potential for further responsibility.” (Emphasis added)
37. The manual does not provide that promotion and advancement is based on anything else but current performance and demonstrated potential.
38. It is the court’s considered finding that the cross petitioner/Respondent has not presented an iota of evidence that the Petitioner was a non-performer and did not deserve the position held from 1998 upto the year 2023, a period of about 25 years. There is no iota of evidence by the Cross-Petitioner/ Respondent that the Petitioner did not deserve the salary earned for work done during the period of 25 years. The claim for Respondent’s salary earned by the Petitioner over the years served is completely unmerited and depicts lack of good faith on the part of the Respondent.
38. The Respondent has also not presented any evidence at all that it followed the procedure set out under clause 8.23.2.1 titled “procedure for gross misconduct “in the HR and Procedure Manual in respect of the gross misconduct alleged against the Petitioner. No evidence was presented that DHRA made a recommendation to the Managing Director on the cause of action. No decision arising from such recommendation was sent to the Petitioner and copied to the Corporate Disciplinary Committee and the union representatives. There is no evidence that DHRA then forwarded the case to the Security Department for appropriate investigations. As a matter of fact, no investigation report, arising from such investigation was presented to the Petitioner before responding to the notice to show cause and before attending the disciplinary hearing. No such evidence has been placed before court.
39. The notice to show cause to the Petitioner dated 8/8/2023 does not reference any investigation conducted and any involvement of the Petitioner in that process prior to charging the Petitioner with gross misconduct.
40. The court has considered the response to the notice to show cause by the Petitioner dated 17/8/2023. The response referred to her various certificates submitted to the Respondent and did not expressly



make an admission with respect to a certificate from Graffins College. Indeed, the reply does not name any such certificate instead she said,

“It is with utter surprise that among the certificates there is one which is not authentic.”  
This cannot by any stretch of imagination amount to an admission as concluded by the Respondent.

41. The minutes of the hearing presented by the Respondent dated 13/10/2023 states:-

“The employee submitted that when she received the show cause letter the Human Resource Manager did not allow her to access the alleged certificate.” The minutes show further:-

“That she has a certificate in Human Resource and Public Relations. That she has never been a student of Graffins College.”

42. The minutes show that the union representatives pointed out that the authentication exercise directed by PSC was in respect of new employees, employed in the last 10 years and that the Petitioner had not submitted any certificates for verification in the said exercise as she had worked for more than 10 years.

43. It is the court’s finding that the Respondent’s submission before court that the Petitioner had admitted the offence in her response to the notice to show cause at the disciplinary hearing is false.

44. Clearly, the termination of employment of the Claimant was not for a valid reason, did not follow the Human Resource Procedure Manual and specific directive by the PSC and is therefore unlawful and unfair and in violation of Article 41(1) and 47(1) of *the Constitution* of Kenya 2010.

45. The Respondent also violated section 41, 43, 44, and 45 of *Employment Act*, 2007.

46. In answer to issues (i) and (ii) above, the court returns that the petition has merit and the cross-petition lack merit and is dismissed in its entirety.

## Reliefs

47. The court relies on the decision of Kenfreight (EA) and Benson K Nguti (2018) eklr where the Supreme Court held that

“Guided by the above analysis, we find that once a court has reached a finding that an employer has unlawfully terminated an employee’s employment, the appropriate remedy is the one provided under Section 49 of the *Employment Act*. We also need to clarify that a payment of an award in Section 49(1)(a) is different from an award under Section 49 (1)(b) and (c). Section 49 allows an award to include any or all of the listed remedies provided that a Court in making the award, exercises its discretion judiciously and is guided by Section 49(4) (a) to (m)’

The factors under section 49(4) includes, inter alia;

- a. the wishes of the employee;
- b. the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and
- c. the practicability of recommending reinstatement or reengagement

48. The court taking into account the above factors and the fact that the Petitioner has suffered immense loss and damage as a result of the violation of constitutional rights under Article 41(1) and 47(1) of *the*



Constitution finds that the Petitioner is deserving of the prayers sought to vindicate her rights protected under the constitution and the rule of law.

49. Accordingly, the court awards the Petitioner all the prayers sought in the amended petition dated 25<sup>th</sup> August 2024, against the Respondent as follows:
- a. A declaration that the Petitioner's disciplinary process particularly the notice to show cause and subsequent processes having been initiated without adherence to the Respondent's Human Resource Manual and Articles 41 and 47 of the Constitution is a nullity.
  - b. A declaration that the Petitioner is in possession of valid academic certificates save for the said forged certificate from Graffins College.
  - c. An order of certiorari to quash the decision of the Respondent in initiating, the disciplinary process and dismissing the Petitioner on allegations of a forged certificate from Graffins College and reinstate the Petitioner back to employment.
  - d. A declaration that the dismissal of the Petitioner from employment by the Respondent was unfair and that the Petitioner be reinstated back to employment.
  - e. An order directing the Respondent to pay the unpaid employment dues to the Petitioner as from the date of suspension till the date of reinstatement back to employment.
  - f. Costs of the petition and interests thereon.

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Orlando for Petitioner

Owino for Respondent

Mr. Kemboi – Court Assistant

