



REPUBLIC OF KENYA



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**Taabu v Nairobi Evangelical Graduate School of Theology (Civil Appeal
599 of 2019) [2025] KECA 1737 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1737 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 599 OF 2019
DK MUSINGA, M NGUGI & FA OCHIENG, JJA
OCTOBER 24, 2025**

BETWEEN

GLORIA A. N. TAABU APPELLANT

AND

**NAIROBI EVANGELICAL GRADUATE SCHOOL OF
THEOLOGY RESPONDENT**

*(Being an appeal from the judgment and decree of the High Court of Kenya
at Nairobi (Ougo, J.) dated 15th January 2015 in HCCC No. 1046 of 2006)*

JUDGMENT

1. In the appeal before us, the appellant, Gloria A.N. Taabu, challenges the decision of the High Court (R. E. Ougo J.) dated 15th January 2015 which for the most part, dismissed her claim against the respondent, the Nairobi Evangelical School of Theology (NEGST).
2. In the plaint dated 26th September 2006, the appellant sought, as against the respondent, general damages for libel and unlawful dismissal; aggravated and exemplary damages for malicious libel; and an order that the respondent retracts the libellous publication and tenders an apology to her. She also sought special damages of Kenya shillings 278, 330, as well as costs of the suit and interest thereon.
3. The basis of her claim was that she was, from 9th February 2005, employed as Hospitality Manager at the respondent's Institute for African Studies at a gross monthly salary of Kshs. 29,000. She averred that on 9th August 2006, without any justifiable cause or grounds, she was maliciously and wrongfully summarily dismissed. She further averred that prior to her dismissal, she had rendered two and a half years of distinguished service as a dedicated, honest and dependable employee to the respondent, with no reprimand or caution for any misconduct; and that she was treated with disdain, demonstrated by refusal by the respondent to negotiate a definite annual salary for her.



4. The appellant further averred that her dismissal was designed to victimise her for her persistent protests for justice for employees and regularisation of the respondent's treatment of employees, including critical issues touching on her own employment such as a formal employment contract and uncertainty of her salary increments.
5. It was her averment that her dismissal was the culmination of a calculated witch-hunt to silence her by hounding her out of office, manifest in the fact that the dismissal was solely based on some irregular alleged audit, conducted under a cloud of mystery as she was not called to defend herself, nor was she interviewed or presented with a copy of the audit report that allegedly revealed an unexplained loss of Kshs. 1,083,997 under her supervision.
6. The appellant further averred that her dismissal was communicated via a letter copied to the respondent's managers and legal counsel. She contended that the letter of dismissal, dated 9th August 2006, was published under no confidential cover, and that the natural and ordinary meaning of its contents was that she was a thief, a corrupt and unreliable individual; a schemer and a conniver.
7. She further averred that the publication was made maliciously and recklessly, without regard to the rules of natural justice, was intended to demean and disparage her and assassinate her character; lower her self-esteem, and destroy her future earning prospects. She asserted that she had suffered loss and damage to her earnings and future employment prospects, stigma and mental anguish, and she sought the damages aforesaid.
8. In its Defence and Counterclaim dated 8th November 2006, the respondent stated that the appellant was employed at its Institute for the Study of African Realities (ISAR) as a hospitality supervisor in charge of its guest house and cafeteria at a basic salary of Kshs. 29,000. It further stated that the appellant received and held money and other resources necessary to operate the facility, and that she received money and other resources from the sale of food and other items, all on account of the respondent.
9. According to the respondent, the appellant was under a duty to manage the facility and fully account to the respondent, and to undertake the functions of her office in the best interests of the respondent. It averred that in breach of her duty and position of trust, and in negligent abdication of her responsibilities to the respondent, the appellant refused to keep proper books of account or fully account to the respondent, and fraudulently derived unauthorised benefit from her office, leading to her summary dismissal.
10. In its counterclaim, the respondent set out the particulars of the appellant's misconduct that led to her dismissal. It stated that the appellant refused to cooperate with it on investigations, even though she was given an opportunity to be heard, and no rules of natural justice were broken in her dismissal. The respondent denied that the termination of the appellant's employment was malicious or unlawful. It asserted that the appellant was neither honest nor dependable; that she was afforded an opportunity to be heard; and that it properly terminated her employment.
11. With respect to the appellant's claim in defamation, the respondent denied that its words were defamatory or that the appellant suffered any loss or damage. It was its case, however, that even if they were, they were published on an occasion of privilege and were made after careful inquiry into the discharge of the appellant's duties, and the results of the inquiry were communicated to the appellant and to the parties copied therein on a need to know basis.
12. The respondent therefore averred that the appellant was not entitled to damages; and that it acted properly in dismissing her to protect itself from further loss and damage. It averred that the appellant took unauthorised benefits to the tune of Kshs. 1,083,997, comprising money obtained on account of



- inflated purchases amounting to Kshs. 609,765 and unaccounted for income from airtime purchases amounting to Kshs. 474,241.
13. The respondent averred, in the alternative, that in abdication of her responsibilities and by negligent discharge of the functions of her office, or with fraudulent intent, the appellant failed to honour her obligations to the respondent and thereby subjected the respondent to a loss of the said Kshs. 1,083,997. The respondent prayed that the appellant's suit be dismissed and its counterclaim allowed.
 14. Upon hearing the parties, the trial court found the appellant's dismissal unlawful and awarded her two months' unpaid salary in damages and one month's salary in lieu of notice. The court, however, found no merit in the claim in defamation, holding that there had been no publication to third parties outside the institution. She found no basis for awarding exemplary or aggravated damages, and dismissed these elements of her claim. The trial court also found no merit in the counterclaim and dismissed it.
 15. Dissatisfied with the judgment, the appellant filed the present appeal in which she raises 8 grounds of appeal in the memorandum of appeal dated 2nd November 2019. Summarised, these are that the trial court erred in law and fact: in failing to award her damages for unlawful dismissal without regard to the evidence tendered and the law; completely failing to appreciate her legitimate expectation to fair labour practices with regard to promotion, regular salary increment, non- discrimination and equitableness; holding that she was only entitled to a salary of Kshs. 29,000 and not Kshs 37.095 as she had testified and proved in her evidence; finding that she was only entitled to her unpaid salary of Kshs.29.000 for June and July 2007 and one month's salary in lieu of notice; disregarding the entire evidence and claim that she had tendered; and failing to consider her submissions and authorities cited.
 16. She asserted further that the trial court erred in law and fact in holding that she was not entitled to three months' salary in lieu of notice, severance pay and or alternative service pay as provided by law; misdirected and contradicted herself in law and fact by holding that the appellant was not defamed at all despite holding and finding that the respondent had not proved its claim against her for theft and loss of Kshs. 1,083.997 as published in the dismissal letter which lowered her reputation; failing to appreciate her clear evidence that the published letter dismissing her had caused her to lose employment prospects and led to her being shunned in the community; failing to appreciate that the respondent had violated the *akn ke act 2007 11 Employment Act* by failing to issue an appointment letter to her, and in failing to order the respondent to issue her with a certificate of service and an apology for the malicious publication.
 17. As this is a first appeal, we are under a duty to re-evaluate the evidence before the trial court and reach our own conclusions- see *Selle -vs- Associated Motor Boat Co.*[1968] EA 123.
 18. At the hearing of the suit, the appellant testified but called no witnesses. She reiterated the essential elements of her claim as set out in her plaint. She stated that she was employed in early 2004 as a hospitality supervisor until she was sent on compulsory leave on 30th May 2006, when she was also told by the Deputy Vice- Chancellor that the respondent was restructuring. Thereafter, she was told that there was a loss of Kshs.1,087,997 at the respondent's guest house which the respondent was demanding from her. She stated that it was not her duty to account to the respondent for the losses, asserting that her duties included operations related to cooking, receiving and settling guests, room cleaning and laundry. She was not charged with any criminal offence in relation to the alleged loss.
 19. She further testified that she had gone back to work after the 30 days' compulsory leave and was asked to resign, which she declined to do. Before her leave, she had not been paid three months' salary at Kshs. 37,095. Her salary had initially been Kshs. 29,000 between September 2005 and September 2006, but was thereafter raised to Kshs. 37,095. Before the compulsory leave, she had raised issues related to her overtime and maternity leave. She had never been given an appointment letter.



20. It was the appellant's testimony that she was given a letter of dismissal dated 9th August 2006 which was defamatory as it was copied to other people, and its contents meant that she was a thief and not honest. Further, that the letter of dismissal was defamatory and she had been unable to secure employment. She stated that she had applied elsewhere for employment and when asked for a recommendation, she could not produce the dismissal letter. She testified that she had applied for a position with the Anglican Church as a Mothers' Union Coordinator but she did not get the job as the Church followed up and learnt of her dismissal.
21. On its part, the respondent called two witnesses, Peter Muroncia and Thomas Chungi Ondigi. Mr. Muroncia, then a manager in charge of human resources and administration at the African International University, (formerly NEGST), adopted his statement dated 26th February 2014. It was his testimony that the appellant received and held money from the sale of food, airtime and other items at the institution on behalf of the respondent; that the respondent noted that its guest house was making losses despite increased patrons; and that it hired the services of the firm of Thomas & Associates to conduct an investigation into the losses at the facility.
22. Mr. Muroncia confirmed that the appellant had been suspended to allow for investigations and that the investigations, which looked into the invoicing, receipts, petty cash and procurement, showed that the appellant was engaged in false and fraudulent accounting in which she altered entries in the receipt books and plucked receipts from other receipt books. He testified that the report showed that there had been loss of airtime worth Kshs. 474,421 and many failures on the part of the appellant in managing the facility, leading to a loss of Kshs. 1,294,149.
23. It was his testimony that the report had been discussed with the appellant prior to its conclusion and an explanation sought from her but she did not give a reasonable explanation, seeking instead to blame other people in the institution. He stated that the audit report was concluded on 28th of July 2006 after which it was decided that the appellant should be dismissed. Mr. Muroncia asserted that the dismissal letter, which carried the reasons for the dismissal of the appellant, was not published as it was addressed to the appellant and was only copied to other officers of the respondent on a need to know basis. He maintained that the appellant was in breach of her fiduciary duties to the respondent. She had been paid her salary as at May 2006, which was Kshs. 29,000 and not 37,095 as she alleged.
24. The respondent's second witness, Thomas Chungi Ondigi, running an audit firm in the name of Thomas & Associates, had been instructed by the respondent to carry out an audit to establish why its guest house was incurring losses. He was required to carry out an audit into its system and to ensure that the respondent had proper internal controls. He carried out the audit and provided a report dated 28th July 2006. It was his testimony that they could not establish the exact losses incurred as there had been pages plucked from receipt books.
25. The audit report noted that purchases for the respondent's guest house had been made at inflated prices compared to procurements for other institutions that his firm had undertaken. He testified that they had found that there was a loss of Kshs. 609,756 in respect of procurements and Kshs. 474,241 with respect to airtime. He stated that they did not interact with the appellant during the audit, nor did they discuss the report with her. Their audit into the losses incurred was not to implicate the appellant but to establish the weaknesses in the respondent's procurement system.
26. Upon hearing the respective cases of the parties, the trial court rendered the decision the subject of the present appeal.
27. In support of her appeal, the appellant filed submissions dated 28th July 2020 which were highlighted by her learned counsel, Mr. Mandala, at the hearing of the appeal. The appellant identified two



issues for determination, abandoning the grounds of appeal in respect of her claim for severance and alternative service pay. The two issues were whether the trial judge erred in law and fact when she found that the appellant had been unlawfully dismissed but failed to award general damages; and whether the trial judge erred in not finding that the letter of dismissal dated 9th August 2006 was defamatory.

28. With regard to the first issue, the appellant submitted that the trial court found and held that she was unlawfully dismissed as she was not given a fair hearing, but it failed to award any damages as sought in the plaint. She submitted that in her submissions before the trial court, she had suggested the sum of Kshs.5,000,000, noting that at the time of her dismissal, she was earning Kshs 29,000. She relied on the case of *East African Airways v Knight* [1975] EA 165 for the proposition that a person wrongfully dismissed is entitled to be compensated fully for the financial loss suffered as a result of the dismissal.
29. With regard to the second issue, whether the letter dated 9th August 2006 was published and was defamatory, the appellant submitted that she had lost many job prospects due to the termination letter, which was issued unlawfully as the trial court found that the summary dismissal was unlawful. She submitted that she was entitled to general damages for libel, which is actionable per se as injury is presumed, and the complainant does not have to prove injury or loss. The appellant submitted further that the respondent did not tender an apology to her, despite demand, and she was therefore entitled to punitive, aggravated and exemplary damages of Kshs. 3,000,000.
30. In its submissions dated 2nd September 2020, which were highlighted at the hearing by learned counsel, Dr. Owino, the respondent submitted that contrary to the appellant's submissions, the trial court had, upon finding that her dismissal was unlawful, awarded her two (2) months' salary and one month's salary in lieu of notice, amounting to Kshs. 87,000, an amount which, it submitted, was adequate compensation in light of the then applicable law.
31. The respondent submitted that the appellant was dismissed on 9th August 2006, and the applicable law then was the now repealed *akn ke act 2007 11 Employment Act* Cap 226 of the Laws of Kenya, and not the *akn ke act 2007 11 Employment Act, 2007*. The respondent cited section 14 and 16 of the repealed *akn ke act 2007 11 Employment Act* to submit that under the said sections, it was not mandatory for the employer to give reasons for termination, or to give an employee an opportunity to be heard; and that the requirement to give reasons prior to termination and to have an employee heard prior to termination came into force under the *akn ke act 2007 11 Employment Act, 2007*.
32. The respondent relied on the case of *Ezekiel Nyangoya Okemwa v Kenya Marine & Fisheries Research Institute* [2016] eKLR in which the court cited the decision of this Court in *Kenya Revenue Authority v. Menginya Salim Murgani* [2010] eKLR where it was held that prior to 2007, employers had no obligation to observe principles of natural justice in termination of contracts of employment, and that employers could terminate contracts of employment at will. The respondent's submission was that the repealed *akn ke act 2007 11 Employment Act* only provided for damages in form of salary in lieu of notice and nothing more; and did not provide for general damages for unlawful dismissal, reliance also being placed on the case of *James Kinyua v University of Nairobi* [2019] eKLR.
33. With regard to the question whether the appellant was entitled to general damages for unlawful dismissal, the respondent submitted that as a general rule, general damages are not recoverable in cases of alleged breach of contract, reliance being placed on the case of *Dharamshi v Karsan* [1974] EA 41 and *Securicor (K) v Benson David Onyango & Anor* [2008] eKLR. Its submission was that as the appellant had quantified and particularized what she considered to have been the loss she suffered, there would be no basis upon which the learned judge could award the totally different, unrelated, unclaimed and unquantified sum of Kshs.5,000,000 suggested in the submissions.



34. In further submissions regarding the damages awarded, the respondent noted that at the time of her dismissal, the appellant was earning a monthly salary of Kshs.29,000. The respondent submitted that the appellant had relied on an unsigned letter dated 29th August 2004 addressed to one Florence and purportedly written by one Karl Dortzbach to argue that her salary had been increased to Kshs. 37,095 from September, 2004, despite confirming in her testimony that she had never earned Kshs. 37,095. Its submission was that the trial court properly relied on the salary vouchers showing the appellant's salary as Kshs. 29,000 and not the Kshs. 37, 095 that she claimed.
35. With regard to the claim for 3 months' unpaid salary amounting to Kshs.131,285, the respondent submitted that in her letter dated 17th August 2006, the appellant was only claiming her salary for the months of June and July 2006, and not May 2006. She could therefore not claim salary for three months in her plaint, and the trial court therefore did not err in awarding two months' unpaid salary.
36. Regarding the appellant's contention that the contents of the dismissal letter dated 9th August 2006 were defamatory, the respondent relied on the case of Musikari Kombo v Royal Media Services Limited [2018] KECA 801 (KLR) with respect to what a claimant in a defamation claim needed to establish, namely the existence of a defamatory statement; that the defendant has published or caused the publication of the defamatory statement; and that the publication refers to the claimant.
37. The respondent submitted that the appellant's claim for damages for libel and unconditional apology arose from the dismissal letter dated 9th August 2006 addressed to the appellant and copied to the respondent's relevant managers and lawyer on a purely need to know basis. It submitted that the contents of the letter only addressed the reasons for dismissal of the appellant and contained nothing defamatory. Its submission was that the letter was not copied to any third parties and was therefore not published within the meaning of the law as the persons copied had the legitimate interest to know the status of the employees and to provide legal advice on the status and welfare of the employees.
38. Further, that there was no evidence the letter was circulated to persons other than the persons copied on the letter, and evidence as to whether the termination letter was written on a 'confidential cover' or not is immaterial as there is no law that mandates employers to issue termination letters on a confidential cover.
39. The respondent submitted further that no evidence was led to support the claim on defamation; that no witness was called to say they read that letter and understood it to mean the allegations made in the plaint; and that no evidence was led to show that the said letter was published to any potential employer as alleged by the plaint. Its submission was that it did not matter that the letter was not written under confidential cover, so long as the respondent did not publish the letter within the meaning of the law. Its submission, therefore, was that the trial court did not err in finding that the appellant was not entitled to damages for libel. The respondent prayed that this appeal be dismissed with costs.
40. We have considered the record of appeal and the submissions of the parties, both oral and written. In our view, two issues arise for determination:
 - i. Whether the appellant was entitled to general damages for unlawful dismissal beyond the Kshs. 87,000 awarded by the trial court in respect of the dismissal; and
 - ii. Whether the trial court erred in dismissing the appellant's claim in defamation and in not granting her general, aggravated or exemplary damages in respect thereof.
41. With regard to the first issue on the claimant's entitlement to damages, we note that in its decision, the trial court found that the dismissal of the appellant was unlawful, and made an award of Kshs. 87,000 comprising two months' salary and one month's salary in lieu of notice, and did not award general



damages as claimed in the plaint. The appellant was dismissed summarily by a letter dated 9th August 2006, and it cannot be disputed that the applicable law at the time of the appellant's dismissal was the repealed *akn ke act 2007 11 Employment Act*, Cap 226 of the Laws of Kenya. This Act did not provide for general damages for unlawful dismissal. Instead, the claimant's remedy was limited to the salary that would have been due in lieu of notice in accordance with section 16 of the repealed *akn ke act 2007 11 Employment Act*, which provided that:

16. Either of the parties to a contract of service to which paragraph (ii) or (iii) of subsection (5), or the proviso thereto, of section 14 applies, may terminate the contract without notice upon payment to the other party of the wages or salary which would have been earned by that other party, or paid by him, as the case may be, in respect of the period of notice required to be given under the corresponding provision of that subsection.
42. See also the decision of this Court in *Kiambu Unity Finance Co-operative Union Ltd v Warwathe & another* (Civil Appeal 246 of 2018) [2024] KECA 663 (KLR) (14 June 2024) (Judgment).
 43. Given the provisions of the employment law applicable to the contract between the appellant and the respondent, the trial court had no power to grant general damages for unfair dismissal to the appellant. This explains why, despite the finding that the dismissal of the appellant was unfair, it did not grant her any of the damages that she claimed in her plaint. We are satisfied, therefore, that the trial court did not err in not granting any damages other than what was provided for under the law then applicable.
 44. We now turn to the second issue before us. The appellant challenges the trial court's finding that she had not established that the letter of dismissal had been published, or that its contents were libellous. To sustain her claim in defamation, the appellant was required to establish the three elements identified by this Court in *Musikari Kombo v Royal Media Services Limited* (supra):

“It follows that a claimant in a defamation suit ought to principally establish, in no particular order:

 - i. The existence of a defamatory statement;
 - ii. The defendant has published or caused the publication of the defamatory statement;
 - iii. The publication refers to the claimant.”
 45. The evidence before the trial court indicates that the letter of dismissal dated 9th August 2006, which the appellant alleges was defamatory in content, was addressed to the appellant. It was copied to the respondent's Deputy Vice-Chancellor for Finance and Administration; The Human Resources and Administration Director; Dr. Timothy Gatara, ISAR Director; and the respondent's lawyers, Ojiambo & Co. Advocates. The letter was thus copied, primarily, internally, to persons with a legitimate interest in receiving the information therein regarding the dismissal of the appellant, who was the hospitality supervisor of the ISAR guest house. The respondent's advocates were also legitimately copied on the communication in view of the respondent's intention to recover the amount of its losses set out in the dismissal letter from the appellant.
 46. In attempting to demonstrate that the dismissal letter was defamatory, the appellant alleged that she had been unable to find employment, citing, by way of illustration, possible employment as the Mothers' Union Co-ordinator for the Anglican Church, which she alleged did not materialise as the Church found out about her dismissal. She did not, however, call any evidence in support of this



contention, nor did she explain how the letter of dismissal, copied internally as it was, could have been 'published' to the Anglican Church and thereby become an impediment to her employment.

47. The upshot of our findings above is that we find no merit in the present appeal. It is hereby dismissed with costs to the respondent.
48. This judgment is delivered under rule 34(4) of this Court's Rules following the untimely death of Ochieng, J.A. before its delivery.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2025.

D. K. MUSINGA (PRESIDENT)

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JUDGE OF APPEAL MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

Deputy Registrar .

