

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E726 OF 2021

MATHEW MUANGE MUNGUTI.....
CLAIMANT

VERSUS

MACHAKOS COUNTY ASSEMBLY SERVICE BOARD.....
RESPONDENT

JUDGMENT

Introduction

1. For determination is the Claimant's Amended Memorandum of Claim dated 27th November, 2023, wherein the Claimant alleges unfair and unlawful treatment at the place of work, and seeks the following reliefs as against the Respondent: -
 - a) A declaration that the Claimant was unfairly, wrongfully, and unlawfully deployed from the position of Ag. Head of Procedure and Committee Services to the department of Legal, Library, and Research in charge of Library Services
 - b) An order to issue reinstating the Claimant to the position of Ag. Head of Procedure and Committee Services, and to immediately be confirmed substantively and the

confirmation backdated to six months after the time he started serving in acting capacity.

- c) An order compelling the Respondent to pay the Claimant cumulative liquidated damages of Kssh.3,024,000
- d) In the alternative to (b) and (c), an order compelling the Respondent to act in any other manner that shall be of full redress to the Claimant
- e) General and punitive damages for unfair, unlawful, and discriminatory deployment of the Claimant
- f) General and punitive damages for the unlawful and unfair demotion and victimization of the Claimant
- g) Interests and costs.

2. The Respondent entered an appearance and subsequently filed a Statement of Response dated 14th October, 2021, in response to the Claimant's claim.

3. The Claimant's case was heard on 14th February, 2025, when the Claimant (CW2) testified in support of his case. He adopted his witness statement and produced his list and bundle of documents as exhibits in the matter. The Claimant further presented the evidence of one Ben Murei (CW1), who equally adopted his witness statement in support of the Claimant's case.

4. The Respondent's case was subsequently heard on 10th June, 2025, when the Respondent's witnesses, Mr. Dennis Musyoka Mutui (RW1), testified in support of the

Respondent's case. He adopted his witness statement and produced the Respondent's list and bundle of documents as exhibits in the matter.

5. Submissions were filed for both parties and have been duly considered.

The Claimant's Case

6. The Claimant states he was employed by the Respondent on 23rd December, 2013, and has since served in various senior positions. He avers that throughout his employment, he has performed diligently and without any disciplinary or performance issues.
7. It is his case that his service has been continuous and in full compliance with the employment contract, the Employment Act, the County Public Service Human Resource Manual, and the Respondent's Staff Manual and Code of Conduct from the onset of devolution.
8. The Claimant states that he has served diligently as a pioneer advisor to the first and second Speakers and Assemblies of the Machakos County Assembly, providing guidance on procedures, general practices, and assembly conduct. He avers that he was later appointed Acting Head of Procedure and Committee Services, earning

commendations for his dedication, leadership, and suitability, with no disciplinary or performance issues recorded.

9. It is his case that he was initially employed as a Senior Clerk Assistant by the Machakos County Assembly Service Board, and that his duties included drafting and processing motions, conducting procedural research, serving as a committee clerk, handling administrative and financial tasks, and organizing seminars and conferences.
10. He states that he was confirmed in his position on 19th November, 2014, after demonstrating professionalism and competence. It is his case that, as Acting Head of Procedures and Committee Services from 1st July, 2015, he oversaw departmental operations, including the Table Office, Committee Services, Procedural Research, and Journals, and advised the Speaker and Assembly members on legislative procedure and practice.
11. The Claimant states that his duties effectively made him the substantive deputy to the Clerk of the Machakos County Assembly, granting him full authority to run Assembly business, a role he states he performed with distinction from 2013 onward.
12. The Claimant states that on 8th February 2021, he received a letter from the Clerk and Secretary/CEO of the County Assembly Service Board redeploying him to head the Legal,

Library, and Research Department. He avers that the letter was irregular as it lacked reference minutes, it failed to address his prior performance or salary implications, gave him only two days to hand over, and required him to hand over to a junior who was later promoted to his former position.

13. The Claimant states that no interviews or consultations were conducted, and the decision was made unilaterally, violating the principles of fairness and natural justice.
14. It is his case that though described as a redeployment, it was in fact a demotion, forcing him to work under his juniors and downgrading his role from heading a department to leading a single section. He avers that his complaints about the redeployment were ignored.
15. The Claimant states that the redeployment severely affected him and his performance declined due to lack of experience in the new role, his salary was reduced contrary to law and HR policy, and he suffered financial strain, psychological distress, and health issues, including high blood pressure. He further states that his family's welfare and his ability to support his children's education were also affected. It is his position that at the age of 55 years, the demotion has hindered his career growth, reduced his pension prospects, and has threatened to have a lasting adverse effect on his and his family's lives.

16. He states that since the redeployment, he has been treated as an “unwanted” or “outcast” at his workplace, deliberately shunned and avoided by his colleagues, leaving him isolated and marginalized.
17. The Claimant avers that the Respondent has deliberately and unfairly withheld his committee subsistence allowances and other entitlements totaling Kshs.450,000 over two years, despite paying all other employees and his repeated requests for payment, which have caused him significant hardship.
18. It is the Claimant’s position that the Respondent has discriminated against him by disregarding the substantial investment made in his professional development, including training courses, seminars, and his completion of a Master’s degree in Strategic Management and Leadership, and his qualifications and experience in managing assembly business.
19. The Claimant contends that his redeployment was not genuine or made in good faith, but was a deliberate scheme to frustrate, humiliate, and unlawfully demean him. He argues that no valid reasons were provided for the move, no proper consultations were held, and he was denied a fair hearing before the decision was made. He further avers that the redeployment was not based on operational needs and ignored established procedures regarding merit,

performance, suitability, and career progression, rendering it discriminatory and unfair.

20. It is his case that despite his long and dedicated service, he has stagnated in Job Group 9 for eight years, while his colleagues hired at the same time have been promoted to Job Group 10. He maintains that he should have been promoted to Job Group 10 within six months of his appointment as Acting Head of Procedure and Committee Services and paid a salary and allowances commensurate with that position.
21. The Claimant states that he achieved the highest score in the Respondent's suitability and performance appraisal during interviews for the position of Head of Procedure and Committee Services held on 1st July 2020. He avers that despite this, he was unfairly reassigned to the Department of Legal, Library, and Research to head the Library Section, a clear demotion from department head to section head.
22. The Claimant states that the Respondent's actions violated the Constitution, the Employment Act, his employment contract, the County Public Service Human Resource Manual, and fundamental principles of good labour practice and natural justice.
23. CW1 confirmed in his testimony that he received a report that the Claimant was discovered by the Respondent to be

the whistleblower in a case of corruption involving the Respondent, and that he was demoted, harassed, and intimidated as a result. He confirmed further that, on listening to the Claimant's complaint, he formed the conclusion that the Claimant suffered retaliation from the Respondent.

24. On cross-examination, CW1 told the court that he could not confirm whether charges were preferred against any officer of the Respondent related to the Claimant's whistleblowing.
25. CW2; the Claimant told the court that he acted in the position of Head of Procedures and Committee Services for five (5) years and 6 months. He further told the court that when he was invited for a suitability test, a question was put to him on why he reported the County Assembly to EACC in respect of a tender earlier in July 2020.
26. On cross-examination, the Claimant told the court that he only complained about the redeployment in July 2021, while the redeployment had taken effect early in the year. He further confirmed that though his salary remained the same upon the redeployment, he lost allowances such as the acting allowance.
27. He stated that he did not allege that his juniors were promoted before him. He confirmed that he has not been given any assignment and has not travelled and was

henceforth isolated, the Respondent having become aware that he was a whistleblower.

28. The Claimant's prayer is that the court allow his claim.

The Respondent's Case

29. The Respondent asserts that the Claimant, currently in charge of the Library Section, was first employed on 16th January 2014 as a Senior Clerk Assistant. It states that he was appointed to act as Head of Procedure and Committee Services on 1st July 2015 after the substantive office holder was suspended, but when that officer resumed duties in November 2019, they were both assessed and found unsuitable for the position, and another officer was appointed, and the Claimant redeployed to the Library Section.

30. The Respondent maintains that the redeployment was lawful, procedural, and part of a normal staff harmonization exercise which affected 19 officers, and was not a disciplinary or punitive measure. The Respondent states that the Claimant retained his Job Group (CASB 9) and salary; hence, he was not demoted, dismissed, or victimized. Further, his new department falls under the same directorate, and he has since received relevant training.

31. The Respondent states that there is no link between the redeployment and a report the Claimant allegedly made to the EACC, claiming the Board was unaware of it. It further asserts that the Claimant has a record of four disciplinary warnings, contrary to his claims of spotless service.
32. It is the Respondent's case that the Claimant's health and financial challenges are personal matters unrelated to work, noting that medical cover and wellness facilities are available to him courtesy of the employer/Respondent. It states further that there is no vacancy for Acting Head of Procedure and Committee Services, that the Claimant was never promoted to that position, and that his claims for damages and unpaid benefits are unfounded.
33. The Respondent maintains that the claim is baseless, lacking in merit, and prays that it be dismissed with costs.

Analysis and Determination

34. I have considered the pleadings, the witnesses' testimonies, and the rival submissions. The issues for determination are:
- - i. Whether the Claimant's redeployment amounts to unfair labour practice.
 - ii. Whether the Claimant was discriminated against
 - iii. Whether the Claimant is entitled to the remedies sought.

Whether the Claimant's redeployment amounts to unfair labour practice

35. The Claimant contends that on 8th February 2021, he received a letter from the Clerk and Secretary/CEO of the County Assembly Service Board redeploying him to head the Legal, Library, and Research Department, which letter he asserts was irregular on the basis that it lacked reference minutes, it failed to address his prior performance or salary implications, it gave him only two days to hand over, and finally that it required him to hand over to a junior who was later promoted to his former position.
36. The Claimant states that no interviews or consultations were conducted, and the decision was made unilaterally, violating the principles of fairness and natural justice. He maintains that though the move was christened as a redeployment, it was in fact a demotion, forcing him to work under his juniors and downgrading his role from heading a department to leading a single section.
37. The Claimant states that the redeployment severely affected him and his performance declined due to lack of experience in the new role, his salary was reduced contrary to the law and HR policy, and he suffered financial strain, psychological distress, and health issues, including high blood pressure.

38. On its part, the Respondent asserts that the Claimant was appointed to act as Head of Procedure and Committee Services on 1st July 2015 after the substantive holder was suspended, but when that officer resumed duties in November 2019, they were both assessed and found unsuitable for the position, and another officer was appointed, and the Claimant redeployed to the Library Section, where he currently serves.
39. The Respondent maintains that the redeployment was lawful, procedural, and part of a regular staff harmonization exercise which affected 19 officers, and was not a disciplinary or punitive measure. It insists that the Claimant retained his Job Group and salary; hence, he was not demoted, dismissed, or victimized. It also asserts that his new department falls under the same directorate and that he has since received relevant training.
40. CW1, a former Regional Manager of the Ethics and Anti-Corruption Commission (EACC), in his oral testimony confirmed that he received a report that the Claimant was discovered by the Respondent to be the whistleblower in a case of corruption involving the Respondent, and that he was demoted, harassed, and intimidated as a result. It was his further evidence that, on listening to the Claimant's complaint, he reached the conclusion that the Claimant suffered retaliation from the Respondent, though no officer

of the Respondent was charged in relation to the corruption offences.

41. The question then is whether the redeployment of the Claimant was informed by his reporting of the corruption issues or a regular staff harmonization exercise within the Respondent's operations.
42. Redeployment generally means to transfer an employee from one position, department, or work location to another without terminating the employment contract. Redeployment is deemed lawful if the employment contract or the Human Resources policies in force allow it.
43. Where the redeployment materially changes the employee's terms, then Section 10 (5) of the Employment Act that demands consultation with the employee must be complied with. In ***Peter Njoroge v. Board of Management, Kiambu Institute of Science & Technology (2021) eKLR***, the court held that redeployment that significantly altered the terms of employment without consultation was unlawful.
44. It is not disputed that the Claimant served as Acting Head of Procedure and Committee Services from 1st July, 2015 to 8th February, 2021, when he was redeployed to head the Legal, Library, and Research Department. It is also agreed that he retained the same job group and salary, save for

the acting allowance, which was only applicable to his previous position.

45. An acting appointment is temporary in nature and does not confer substantive rights to the higher position or benefits. An employee cannot, therefore, automatically claim permanent entitlement to a position held in an acting capacity unless formally appointed or confirmed to the position or where the employer's conduct implies such confirmation (**See Josephine M. Ndungu & Others v. Plan International Inc (2016) eKLR**).
46. In **Eric V. Juma v. Kenya Revenue Authority (2018) eKLR**, the court opined that an acting appointment does not give rise to a right to claim the substantive position, unless the employer had promised or represented that acting service would lead to promotion.
47. Having said that, I note that the Claimant served in the position of Head of Procedure and Committee Services in an acting capacity for a period of about five (5) years and six (6) months. This, in my view, was an unreasonably long time for one to act in a position, only to be told that they did not meet the requirements for the position.
48. In practice, acting for a period of more than six months is not recommended, yet the Claimant herein acted for over 5 years. Further, it is a general understanding that an employee appointed in an acting capacity is one who

qualifies to hold the position substantively. How then was the Claimant appointed to act in a position he did not qualify to hold? These unanswered questions, in my view, give credence to the Claimant's assertion that his redeployment was not made in good faith, but was a deliberate scheme to frustrate, humiliate, and unlawfully demean him.

49. The element of bad faith is further corroborated by CW1's testimony confirming that the Claimant was indeed demoted for whistleblowing.

50. In my considered view, a prolonged acting in a position gives rise to a legitimate expectation of formal appointment **(See Republic principal Secretary, Ministry of Interior & Coordination of National Government & Another Ex parte Kithinji Kiragu (2018) eKLR).**

51. I therefore return that the Claimant was unfairly targeted and obviously victimized using the purported redeployment, hence the redeployment amounts to an unfair labour practice, and so I hold.

Whether the Claimant was discriminated against.

52. It is the Claimant's position that the Respondent has discriminated against him by disregarding the substantial investment made in his professional development, including training courses, seminars, and his completion of a Master's degree in Strategic Management and Leadership, and his

qualifications and experience in managing assembly business.

53. It is his assertion that, despite his long and dedicated service, he has stagnated in Job Group 9 for eight years, while his colleagues hired at the same time have been promoted to Job Group 10.

54. In his oral testimony, the Claimant recanted his assertion that his colleagues were promoted while he was not.

55. Section 5(3)(b) of the Employment Act, 2007 states: -

“No employer shall discriminate directly or indirectly, against an employee or prospective employee, or harass an employee or prospective employee—

.....

(b) In respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.”

56. The Claimant has, in my view, not established prima facie how he was discriminated against, as to shift the burden to the Respondent to prove that the act or omission complained of was not discriminatory. He told the court that he did not say his juniors were promoted before him, which was the basis of his discrimination allegation.

57. I therefore hold that the Claimant has not proved a case of discrimination.

Whether the Claimant is entitled to the reliefs sought

58. The Claimant has sought a myriad of reliefs under his statement of claim, including a declaration that the Claimant was unfairly, wrongfully and unlawfully deployed from the position of Ag. Head of Procedure and Committee Services to the department of Legal, Library and Research as the in-charge Library Services, reinstatement to the position of Ag. Head of Procedure and Committee Services, liquidated damages of Kssh.3,024,000, an order compelling the Respondent to act in any other manner that shall be of full redress to the Claimant, general and punitive damages for unfair, unlawful and discriminatory deployment of the Claimant, general and punitive damages for the unlawful and unfair demotion and victimization of the Claimant, interests and costs of the suit.

59. The Respondent's witness told the court that the position of Head of Procedure and Committee Services has since been filled, and that the Claimant confirmed this position. The prayer for reinstatement to the position cannot, therefore, hold on this account.

60. The Claimant did not lead any evidence to justify an award of liquidated damages, and the claim similarly fails.

61. On damages for unfair treatment, the Court has held that the Respondent's action amounted to unfair labour practices, which is not only a violation of his statutory right, but also a gross violation of the Claimant's Constitutional right. This finding entitles the Claimant to an award of damages.

62. Considering how long he acted in the position, coupled with the victimization that ensued upon his redeployment, I deem an award of Kshs.3,500,000 is sufficient compensation for the unfair labour practices.

63. In whole, the Claimant's claim succeeds in terms of the following orders: -

- a) A declaration that the Claimant was unfairly, wrongfully, and unlawfully deployed from the position of Ag. Head of Procedure and Committee Services to the department of Legal, Library, and Research in charge of Library Services.
- b) A declaration that the actions of the Respondent amount to unfair labour practices.
- c) That the Respondent shall pay the Claimant general damages for unfair labour practices in the sum of Kshs.3,500,000/-.
- d) The Respondent shall also bear the costs of the suit.

64. Judgment of the Court.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 20TH DAY OF NOVEMBER,
2025.**

**C. N. BAARI
JUDGE**

Appearance:

Mr. Onsombi present for the Claimant

Mr. Akenga present for the Respondent

Ms. Esther S- C/A