

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. 1299 OF 2017

ANN MWIHAKI NJENGA.....1ST
CLAIMANT
JACKSON KIPTOO CHERUTICH.....2ND
CLAIMANT
ROMANUS O. OTIENO.....3RD CLAIMANT
FLORENCE NANJEKHO MAKILA.....4TH CLAIMANT
NELSON OMWERI NYABUTO.....5TH
CLAIMANT
JOSEPH NYAGA KARIENYA.....6TH CLAIMANT
RAPHAEL SASIA.....7TH CLAIMANT

VERSUS

KENYA REVENUE AUTHORITY.....
RESPONDENT

JUDGMENT

The suit was commenced by a statement of claim filed on 10th July 2017 by the seven Claimants against their employer, Kenya Revenue Authority (KRA) seeking the following reliefs: -

- a) A declaration that the Respondent is guilty of unfair labour practice in respect of its purported termination of the Claimants' employment;
- b) A declaration that the Claimants' right to fair labour practices and fair administrative action has been breached resulting in unfair, irregular and illegal termination of employment;

- c) An order for reinstatement to employment and to be treated in all respects as if the employment had not been terminated. This order to operate in respect of the 3rd, 4th and 7th Claimants to safeguard their pension benefits from the predecessor of the Respondent;
- d) An order compelling the Respondent to unconditionally pay the Claimants all withheld salary and benefits during the period of suspension since March 2011;
- e) Damages for the breach of the Claimants' fundamental right to fair labour practices;
- f) Damages for illegal termination of employment at the maximum 12 months gross salary for each Claimant;
- g) Interest at the court rates;
- h) Costs of this claim; and
- i) Any other remedy that this honourable court may deem just and expedient to grant.

Facts of the claim.

The 3rd and 4th Claimants testified on behalf of all the Claimants and adopted their own witness statements and those of the rest of the Claimants as evidence in chief. The two witnesses also produced bundle 'A' comprising of documentation relevant to the case in respect of all the Claimants.

CW1, Romanus Otieno testified that he worked for the Respondent under a contract of employment dated 29/9/1966 on a permanent and pensionable

basis like the rest of the Claimants whose employment was per the date stated in their witness statements produced before court.

That the Claimants worked well in the cash department of KRA. CW1 worked as chief cashier and by a letter dated 18/3/2011, CW1 received a letter of the same date, which letter was similarly received by the other Claimants. The letter read

“It has been reported that between 1st January 2009 and 30th January 2010, in your capacity as a Chief Cashier you defrauded the Kenya Revenue Authority a sum of Kshs. 4,758,950.00 being payment due for amongst other items motor vehicle inspection fee...You committed the fraud by colluding with the Chief Cashier who then deleted the receipts in the Common Cash Receipting System.

Further as the officer with the authority and capacity to delete receipts, you cancelled receipts without justifiable reason and did not account for the revenue collected from the receipts in question.

The above allegations if proved to be true, constitute of gross misconduct as defined by the KRA Code of Conduct....

Meanwhile, pursuant to the Code of Conduct article 6B (iv) you are hereby (sic) suspended with immediate effect.”

CW1 and other Claimants were placed on suspension pursuant to the Code of Conduct Article 6B (iv) of KRA. The Claimants were asked to respond to the allegations in writing which they did.

CW1 and other Claimants were invited to a hearing before a Disciplinary Committee on 23/4/2014 and 21st May 2014 respectively after staying under suspension for a period of 36 months.

The Claimants were on half salary during the period of suspension. CW1 stated that the inordinate delay in processing the disciplinary case violated their rights to fair labour practices. That the Code of Conduct provided for a 3-month period and later 6-month period in which to process and conclude a disciplinary hearing. CW1 relied on clause 8.4.7 of the Code of Conduct (Rules and Regulation Governing Discipline and Grievances) revised in 2012 which provided "suspension cases will be determined within six months as much as possible."

The Claimant stated that in addition to violating Article 41 of the Constitution which provided,

"Every person has the right to fair labour practices", the Respondent also violated the Claimants' right protected under Article 47 (1) of the Constitution which provides: -

"Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair."

That the employment of CW1 and other Claimants was terminated by a letter dated 23/7/2024 pursuant to a decision made by the Disciplinary Committee on 21/5/2014. The letter partly read: -

“The Disciplinary Committee meeting of 21st May, 2014 deliberated on your representations as contained in your defence letter and personal presentation on 19th March, 2014 and found the same not acceptable. Accordingly, we wish to inform you that you have been dismissed from the service of the Authority with effect from 23rd July, 2014.”

CW1 testified that it was not clear whether the Disciplinary Committee that had met on 23/4/2014 was the same one that made the decision to dismiss the claimants on 21/5/2014 two months later. It was also not clear what was meant by the finding that the “defence letter and personal presentation were not acceptable.” That the letter of dismissal did not give clear reasons for the dismissal. The letter of suspension had not given clear reasons for the suspension also. The committee did not analyze the evidence adduced to arrive at a fair and valid reason(s) for the dismissal.

CW1 said he and his colleagues had denied allegations of cancellation of receipts with intent to defraud KRA. CW1 said deletion of receipts were normal in the daily course of duty of cashiers in two main cases. When the cashier printed wrong receipts, for example, renewal of the motor vehicle inspection permit for a period of one year instead of three years or when double printing that led to receipts being skipped which occurred mainly due to power interruption and network failure. That the Respondent did not

adduce any evidence to distinguish between such genuine deletions and alleged fraudulent detection of receipts.

CW1 added that no evidence was adduced to prove that any deletions made by the Claimants led to the loss of Kshs. 4,758,950.00 and other amounts stated in the letters of suspension and which particular employee was linked to any of the alleged deletions.

CW1 said that the evidence by the supervisor of the Claimants M/s. Jane Muiruri contained in her statement confirmed that all the deleted receipts are supported and from her own analysis, the rate or margin of error was permissible. That also M/s. Margret N. Oganga to whom M/s. Jane reported called for further investigation to separate the genuine deletions from any non-genuine deletions.

CW1 said that there is no evidence that the statements recorded by Jane and Margaret were considered by the Disciplinary Committee so as to exonerate the Claimants from any blame before and after the suspension.

That the process of investigation was flawed and the Commissioner General of KRA noted those shortcomings and declined to sign the recommendation by the Disciplinary Committee. That the Respondent had shifted the burden to the Claimants to prove their innocence and found them guilty unfairly without any clear evidence supporting that finding being presented to the Disciplinary Committee.

CW1 stated that clause 9.11 of the Code of Conduct provided for dismissal of an employee who had been found guilty of gross misconduct. That CW1

and other Claimants were not proved guilty of alleged fraudulent deletions of receipts relating to motor vehicle inspection at the Ministry of Transport.

That in any event the Code of Conduct – provided for Disciplinary Committee to be composed of the following persons: -

- (i) Commissioner
- (ii) Head of Human Resource
- (iii) Head of Finance
- (iv) Head of Legal
- (v) Head of Investigations and Enforcement Department, and
- (vi) Chaired by the Commissioner, supporting services.

That these members are to be appointed by the Commissioner General and also the chairperson was supposed to be a person appointed by the Commissioner General.

That upon sitting, the committee is to make recommendations to the Commissioner General on the type of penalty to be applied. That the Commissioner General is not bound by the recommendations of the committee.

That the Disciplinary Committee that sat on 23/4/2014 on the case of some of the Claimants included: -

- (i) Commissioner, Large Tax Payers Office (Chairing)
- (ii) Ag. Commissioner, Technical Support services
- (iii) A representative of the Commissioner, Customer Services; and
- (iv) Deputy Commissioner, Human Resources;

(b) The following were not in attendance.

- (i) Commissioner, corporate support service.
- (ii) Commissioner DTD – MST
- (iii) Commissioner Investigation and Enforcement
- (iv) Deputy Commissioner, BS;
- (v) Deputy Commissioner ICT
- (vi) Deputy Commissioner Legal and
- (vii) Deputy Commissioner Finance.

Furthermore, the committee that sat on 21/5/2014 that deliberated on and also made the decision to terminate the employment of all the Claimants was constituted of the following: -

(a)

- (i) Commissioner DTD – Large Tax Payers Office (Chairing)
- (ii) Commissioner, Corporate Support Services
- (iii) Commissioner DTD – MST
- (iv) A representative of the Deputy Commissioner, Human Resources
- (v) Ag. Commissioner, Technical Support Services and
- (vi) Ag. Commissioner, Investigations and Enforcement.

(b) The following persons were not in attendance;

- (i) Deputy Commissioner, ICT;
- (ii) Deputy Commissioner, BS;
- (iii) Deputy Commissioner, Human Resources;
- (iv) Deputy Commissioner, Legal and
- (v) Deputy Commissioner, Finance.

CW1 testified that the composition of the Disciplinary Committee that sat on 23/4/2014 and the committee that made the decision to dismiss all the Claimants on 21/5/2014 was different as seen above. It is therefore not clear on what basis persons who did not sit in the disciplinary hearing were than later involved in making the decision to dismiss the Claimants.

That on this reason alone the disciplinary process was unlawful and unfair. Furthermore, the alleged sitting on 23/4/2014 and that held on 21/5/2014 did not comply with the provisions of Rule 3.2 of the code. The first meeting had only two Commissioners whereas the other one of 21/5/2014 had three Commissioners only since the two Acting Commissioners were neither substantive Commissioners nor Heads of Department.

That it is also evident that the Respondent's Investigation Report dated 21/3/2013 on fraudulent deletion of RTD receipts before court, that led to the suspension of the Claimants was done before any or any proper investigation had been undertaken.

That the conduct by the Respondent amounted to unfair labour practice and unlawful administrative action.

The Claimants preferred appeals being dissatisfied with the dismissal made on 23/7/2014 in line with part II of the KRA Code of Conduct. The appeals were dismissed without giving the Claimants a hearing.

That the Claimants have suffered loss and damage including immense psychological, social, financial and mental anguish which has threatened

the Claimants' right to life and livelihood protected under Article 26 of the Constitution. The Claimants in particular received only house allowance during the prolonged period of suspension amounting to 36 months in March 2015 after the dismissal on 23/7/2014. The salary and other benefits were not paid at all during the period of suspension. The Claimants were removed from the payroll and could not access other employee benefits such as medical treatment under the Employee Medical Scheme.

That with unsubstantiated allegations of fraud, the Claimants' name and good standing has been tarnished externally and the Claimants have been unable to obtain alternative employment up to the time of hearing the suit.

The Claimants earned the following salaries as at the time of termination: -

1. 1st Claimant employed on 8/6/1999 Kshs. 131,000.00
2. 2nd Claimant employed in 1985 Kshs. 149,250.00
3. 3rd Claimant employed on 23/9/1996 Kshs. 182,000.00
4. 4th Claimant employed on 23/9/1996 Kshs. 133,000.00
5. 5th Claimant employed on 23/9/1916. Kshs. 137,000.00
6. 6th Claimant employed on 23/9/1996 Kshs. 148,000.00
7. 7th Claimant employed on 23/9/1996 Kshs. 143,000.00

The Claimants pray to be awarded as prayed

CW2 Florence Makila, testified also in support of the Claimants and relied on the witness statement dated 21/6/2017 as her evidence in chief. She was employed on 18/3/2011 and was suspended with others. Her testimony is similar to that by CW1 in all material respects. Under cross-

examination, she said that the reasons for dismissal did not come out clearly in the letter of dismissal. She was employed as accountant II and confirmed that all the seven Claimants worked in the accounts department. That there was no evidence to support the allegations of fraud set out against them by the Respondent. That the Respondent shifted the burden of proof on the Claimant.

CW2 said the panel that heard her case on 19/2/2014 was different from the panel that dismissed her and her colleagues on 2/5/2017. CW1 said herself and colleagues were on suspension for a period of three years and were only paid house allowance and did not access other benefits including medical services. CW2 said that they were paid withheld house allowance and basic salary upon dismissal. CW1 said they were not made aware of the need to be accompanied during the disciplinary hearing. CW1 said benefits accrued during suspension were not paid.

CW2 said she could not get employed elsewhere since she had devoted all her life to the Respondent since 1978. CW2 said this applied to the rest of the Claimants.

Defence

The Respondent called RW1 Julius Chege to testify. He said he was stationed at the Respondent's Ethics and Integrity Department, Internal Affairs Division on or about January 2011. That presently he was Deputy Commissioner Border Control and Enforcement of Customs.

That together with other internal affairs division staff they were tasked to investigate alleged fraudulent deletion of computer receipts in the KRA

receipting system on or about January 2011. That this happened in the Road Transport Department (TLTD) of KRA. That the team comprised of Peter Mugo Ndume, Alice Kiptoo, Martin Mati and RW1.

That RTD no longer existed in KRA and the functions have been taken over by National Treasury and Safety Authority (NTSA). That some of the investigation team members have left KRA.

That investigations were prompted by a letter dated 29/12/2010, written by the Officer in-charge at Likoni Motor Vehicle Inspection Centre, along Likoni Road Nairobi, requesting the Registrar of Motor Vehicles for verification of a computer receipt number 0120305010128 in respect of a payment made by a taxpayer. The receipt was confirmed to be a genuine receipt issued at Forodha cash office but the transaction appeared as deleted in the system and the Kshs. 1,000 paid by the taxpayer on the same had not been accounted for.

This prompted KRA to conduct an audit trail of other computer-generated receipts and the findings indicated more unwarranted deletions. The investigations team found that for the period 1/1/2009 to 31/12/2010, a total of 65,540 RTD receipts with a revenue implication of Kshs. 54,814,084.00 had been fraudulently deleted. That the investigations focused on Times Tower and Forodha cash office in Nairobi which had the highest number of deletions.

The investigations established that the receipts capture took different status including open, confirmed and deleted. That deletions were achieved by

flagging the receipts as deleted in the system. The changes in the status flag were audited and system users occasioning the changes could be identified. The examination of the audit trail revealed that cashiers created the receipts while chief cashier deleted. That daily collection report for a cashier that was used to determine amount collected by a cashier needed to include the amount and number of receipts deleted.

That deletion of receipts was done by chief/ deputy cashier who was assigned Level 4 in the Cash Receipt System (CRS). This was done after the concerned cashier reported to the chief cashier about a cancelled receipt or a skipped receipt. That the accounting procedure for deletion of receipts is that every deleted receipt must be supported by the original physical receipt and if skipped, by both copies of the previous receipt and the preceding which he/she retains for records and accountability. In case of a skipped receipt no hard copy receipt was printed.

RW1 stated that the deletions were fraudulent and revenue collected from there was not accounted for. Some copies of original deleted receipts were recovered from tax payers who provided evidence that the deletions were irregular.

That majority of deletions were confined to a few cashiers. That most of the deletions are fraudulent as they were not backed by the requisite standard and procedure.

The cashiers filed false cashier summary collection records in which they purported that they had collected less revenue than had been collected. To

conceal the irregularity, chief cashiers deliberately failed to include the deleted receipts in the cancelled and skipped receipts register.

That based on the investigation reports Ref. KRA/IAD/INV/VOL.XI(1)33 dated 11/3/2011 and report Ref: KRA/IAD/INV/VOL.XII/ (1) /28 dated 23/12/2011 the investigation team found that the Claimants herein in their capacities as cashiers, deputy chief cashiers or chief cashiers either deleted and/or colluded with the chief/deputy chief cashiers to have various number of receipts fraudulently deleted hence defrauded, the Respondent various sums of monies as captured in the investigation reports. That the name of the employees found culpable were: -

S/No.	Chief and Deputy Cashiers		Cashiers
1.	Florence Makila	7.	Joyce Gachuhi
2.	Peter Muthini Alois	8.	Jackson Cherutich
3.	Romanus Otieno	9.	Anne Njenga
4.	Reuwel Gitahi	10.	Joseph Karienye
5.	Nelson Nyabuto	11.	Ferichina Waweru
6.	Raphael Sasia	12.	Gideon Mutuku

The investigation team recommended to the Respondent to take necessary action against the employees found culpable. That the 1st, 2nd, 3rd and 7th Claimants were suspended on 22/3/2011 while Claimants no. 4th, 5th and 6th were suspended on 18/3/2011. They received the suspension letters accordingly.

That the letter of suspension notified the Claimants of the offences they were accused to have committed and were given an opportunity to show cause why disciplinary action should not be taken against them.

That the seven Claimants gave their written explanations on various dates denying the allegations raised against them.

The Respondent invited the Claimant to appear before its Disciplinary Committee upon considering explanations made in writing by each claimant. That all the Claimants appeared in person before the Disciplinary Committee and were each given opportunity to defend themselves against the allegations made against them.

That upon considering the evidence, the investigation reports and both oral and written explanations by the Claimants, the Disciplinary Committee made its recommendations to the Commissioner General as required of them by the Code of Conduct.

That subsequently, the Seven Claimants were dismissed by the Commissioner General from the employment of the Respondent by letters of dismissal dated 23/7/2014. The Claimants were informed of their right to appeal in the letters. That all the Claimants except for the 2nd Claimant appealed within the 30 days provided in the Code of Conduct. The 2nd Claimant appealed outside the 30 days.

The appeals were considered and no merit was found in any one of them and were dismissed and dismissal of the Claimants was upheld.

That the Respondent had valid reasons to dismiss the Claimants from employment and the Respondent followed a fair procedure in making the decision to dismiss the Claimants.

RW1 was intensively cross-examined by Mr. Nthiga, Advocate for the Claimants. RW1 was persistent on his narration that the investigations conducted by his team found that the Claimants in their positions as cashiers, chief/deputy cashiers, colluded to delete and conceal deleted receipts by omitting to identify them in the daily reports and by so doing defrauded the Respondent of collected revenue from the motor vehicle inspections paid by taxpayers to the loss and detriment of KRA. That the fraudulent deletions and theft of cash was confined to a few cashiers and chief/deputy cashiers who were named in the Investigation Reports aforesaid and were suspended, given notices to show cause, appeared before Disciplinary Committee of the Respondent and were all dismissed for the offences disclosed to them in the letters of suspension.

RW1 said three (3) Claimants were cashiers and others were either chief or deputy cashiers. RW1 insisted that all the 7 Claimants were directly involved in the deletions and the Investigation Reports clearly show which Claimant did what in that trail of fraudulent deletions that led to massive loss of public funds collected from the tax payers.

That written instruction to commence investigations was not done by the Commissioner General to avoid leakage of the matter. The instructions to RW1 and his team to commence the audit trail was verbal to enhance confidentiality and stealth nature of the investigation, RW1 said. That statements were taken from Director of Motor Vehicles who was a

complainant in the matter since the fraud affected revenue collected from the Inspectorate of Motor Vehicles. That statements were recorded from the members of public who had paid the tax in respect of the deleted receipts which money was not accounted for by the Claimants.

RW1 said they prepared two reports and the findings thereof formed the basis of specific charges made against each of the Claimant vide the letters of suspension dated 22/3/2011 and 28/3/2011. RW1 said specific cash lost in respect of deletions attributed to each Claimant was reflected in the Investigation Reports and in the letters of suspension. RW1 said the team had unveiled over 350 deleted receipts and the number deleted by each Claimant is reflected in the reports accordingly. RW1 denied that there were contradictions in the two reports made by the investigation team.

RW1 reiterated that there were instances of genuine deletions in case of erroneous entry or where receipts have been skipped which were properly accounted for. RW1 however stated that the team unveiled deletions that were fraudulent and were concealed via the collusion of the cashiers and the chief/deputy cashiers.

RW2, Daniel Sirorei Munga stated that he was a Chief Manager in-charge of business solution Department at KRA. That at the material time he was Assistant Manager in-charge of Investigation Systems and Security at KRA. RW1 adopted witness statement dated 20/3/2023 as his evidence in chief.

RW2 said the RTD receipting system was operated at RTD cash office situated at Times Tower Building and Forodha House at Community in Nairobi. That the system was used to receipt cash collected for Road Transport Department. That collections for RTD tax heads included

provisional driving licences, test booking and applications for motor vehicle inspection.

That the RTD has since been moved to the National Transport and Safety Authority (NTSA) and no longer present at KRA. RW2 corroborated the evidence by RW1 regarding the manner cash was collected from tax payers by the cashiers, receipt issued reflecting the cash received which should then be reported by the cashiers on a daily basis.

That in case of an erroneous receipt entry, same could be lawfully deleted and reported. Also, in case a cashier wrongly skipped a receipt that skipped receipt could be deleted and correctly reported.

In this case, RW1 said the Claimants who were cashiers colluded with Claimants who were chief/deputy cashiers to fraudulently delete a receipt upon collection of cash, conceal the deletion by failing to report the same and the cash collected was not accounted for by the Claimants to the loss and detriment of the Respondent. The reporting of a deleted receipt was by flagging it and no physical deletion of the receipt occurred. The deleted receipts were then excluded from the system generated revenue reports. Deletion was only done by a chief/deputy cashier who was assigned a level 4 status in the system. That the audit trail for the period 1/1/2010 to 12/1/2011 revealed deletion of receipts and that 14,305 out of 130,107 payments for application for motor vehicle inspection appeared as deleted in the system. That this was approximately 11% of the receipts procured which represented a large deletion proportion for the tax head.

RW2 said the report contained a summary and schedule of the findings and the report was forwarded to the Investigation and Enforcement Department,

Internal Affairs Division to continue further investigations as reported by RW1. This report by RW2 carried findings of the ICT Department with regard to the deletion in the cash receipting system in KRA.

RW2 was closely cross-examined by the advocate for the Claimants and he clarified that the matter was referred to the ICT Department to establish the extent of receipt deletion. That they conducted an analysis of the deletion to establish whether the deletions were legitimate or not. RW2 said he prepared a report and submitted to the investigation team and he was not called to the disciplinary hearings of the Claimants. RW2 explained that each Claimant had a unique code and a password. That the lead cashier allowed each cashier to start daily collection on a specific terminal. That at the end of the day each terminal was closed. That each cashier was restricted to a specific terminal daily and the chief/deputy cashier worked from their designated computers. That access/user rights were given by the system administrator internal.

RW2 said that they were able to provide information of deletions from each designated terminal on a daily basis for the period under review. It was for the investigators to determine the genuineness or otherwise of the deletions. RW2 said the system had no lapses but the problem was in the manner the operations were done by the Claimants.

RW3 Grace Mwangi stated that she was a registered Human Resource Officer Number 1314. That she worked for the Respondent and adopted a witness statement dated 11/7/2019 as her evidence in chief. RW3 relied on exhibits '1' to '11' in support of the Respondent's case. RW3 stated that her

evidence was merely to clarify the process of disciplinary hearing by the Respondent against the Claimant.

RW3 testified that the disciplinary process started with a report of misconduct by the Claimants regarding fraudulent deletion of cash receipts in the RTD. That the reports are dated 11/3/2011 and 23/12/2011. That the Claimants were issued with suspension letters produced before court designating specified offences to the Claimants. That disciplinary process is supposed to be completed within 6 months in terms of the Respondent's code of Conduct. That the clause provided that this was to be done as much as possible but in this case the matter was complicated, technical, involved getting of evidence internally and externally and so took long to conclude. That the Claimants were sent on suspension on proper basis and the delay in concluding the process was justified. That the Claimants were in suspension for a period of three years. That given the complexity of the matter the disciplinary process was handled expeditiously. That the Commissioner General constituted the panel though RW3 did not have that instruction in writing. That the Claimants were allowed to respond to the charges made against each one of them. That each of the Claimants appeared before the Disciplinary Committee. RW3 acknowledged reservations by the Commissioner General dated 22/7/2014 that the disciplinary process did not produce desired results. The reservation by the Commissioner General was noted in hand writing on the recommendation by the Disciplinary Committee dated 21/7/2014. RW3 however stated that the Commissioner General adopted the recommendation by the Disciplinary Committee and dismissed the Claimants from employment.

RW3 stated that the Claimants appealed the decision to dismiss them but the appeals were dismissed by letters dated 19/1/2015. RW3 admitted that the letters did not refer to an appeals panel or to a hearing held before the appeals were dismissed.

RW3 concluded that the Commissioner General properly dismissed the Claimants following the recommendations by the Disciplinary Committee.

DETERMINATION

The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1, CW2, RW1, RW2 and RW3. The issues for determination are: -

- (i) Whether the dismissal of the Claimants was for a valid reason(s) following a fair procedure
- (ii) Whether the Claimants are entitled to the reliefs sought.

The court has carefully considered the evidence adduced by RW1, RW2 and RW3 with regard to the charges made against the Claimants in the letters of suspension dated 22/3/2011 and 18/3/2011 vis a vis the explanation made by the Claimants in their detailed responses to the charges in the written responses by the 1st Claimant dated 31/3/2011; by 2nd Claimant dated 5/4/2011; by the 3rd Claimant dated 30/3/2011; by the 4th Claimant dated 29/3/2011; by the 5th Claimant dated 30/3/2011; by the 6th Claimant dated 28/3/2011 and by the 7th Claimant dated 30/3/2011.

The 1st Claimant was in that notice to show cause alleged to have deleted 836 receipts with implication of cash loss amounting to Kshs. 720,865.00 between period 1/1/2009 and January 2010 in her position as a cashier. The 2nd Claimant was alleged to have fraudulently deleted 1,377 receipts with a cash implication of Kshs. 1,183,025 in his position as a cashier between the period 1/1/2009 and January 2010. The 3rd Claimant was alleged to have fraudulently caused/approved deletion of receipts with cash implication of Kshs. 4,758,950.00 between the period 1/1/2009 and 30/1/2011 in his position as chief cashier; the 4th claimant was alleged to have caused deletion of receipts with cash implication of Kshs. 6,875,000.00 in the period 1/1/2009 and 30/1/2011 in her position as cashier; the 5th Claimant is accused of causing receipt deletion with a fraudulent implication of Kshs. 4,40,750.00 in his position of chief cashier between 1/1/2009 and 30/1/2011; the 6th Claimant is accused of fraudulently deleting receipts with cash implication of Kshs. 360,775.00 between 1/1/2009 and Jan 2010 in his position of cashier and the 7th Claimant is accused of causing deletion of receipts with cash implication of ksh. 2,164,685 between 1/1/2009 and 30/1/2011 in the position of chief cashier.

The letters detailed the specific receipts deleted. All the Claimants were given opportunity to respond to the said charges. The court has considered their specific responses in writing and the evidence of CW1 and CW2 before court. All the Claimants made general denial to the specific charges made against them in writing and before court. The Claimants did not respond to each of the deleted receipts despite clear evidence by RW1, RW2 that the IT System zeroed down on each deletion with specific details

as to the cashier who initiated the deletion and which specific chief/deputy cashier approved the deletion.

The Claimants did not address the tangible evidence by RW1 and RW2 that each of the identified deletion composing charges against the Claimants had been concealed with a fraudulent intent and led to actual loss of public revenue collected by the Claimants in their position as staff in the cash department of KRA at Times Tower office and Forodha offices at Community.

The explanation by the Claimants before court that the charges against them were not clear is not tenable. The Respondent has vide RW1, RW2 and RW3 adduced coherent and credible evidence and on a balance of probability the Respondent has proved in terms of section 43 and 45 of the Employment Act, 2007 that each of the Claimants, individually and in some cases collectively, were guilty of fraudulent deletion of cash receipts to conceal cash collected by KRA as tax to the loss and detriment of the Respondent and the Kenyan public at large.

The court is satisfied that the process followed by the Respondent in disciplining the Claimants was complex and so inordinately delayed for a period of three (3) years. This delay no doubt inconvenienced the Claimants but did not amount to a denial of a fair hearing.

The Claimants had opportunity to respond to the charges against them in writing. The Claimant also had opportunity to explain themselves before a Disciplinary Committee of the Respondent. The Disciplinary Committee recommended to the Commissioner General to dismiss the Claimants for

gross misconduct. The Commission General recognized that the process was not perfect but however approved the recommendation by the Disciplinary Committee and dismissed the Claimants from employment. The Court is satisfied that the process met the standards contemplated under section 41 as read with 45 of the Employment Act, 2007. The court finds that the dismissal of the Claimants was lawful and fair.

The court finds that the Respondent paid the Claimants house allowance during the prolonged period of suspension but not timeously. There was however conflicting evidence from CW1 and CW2 as to whether the Claimants were refunded the unpaid basic salary during this prolonged period under suspension. Since this delay was not of their own making, the claimants are entitled to payment of the basic salary not paid during the three years period they remained under suspension

The court is fortified in the decision by the Court of Appeal decision in ***Kenya Revenue Authority versus Reuwel Waitihaka Gitahi and 2 others [2019] KECA 300 (KLR)*** where the Court of Appeal held as follows:

“We are in no doubt that the Respondent contributed to the acts leading to their termination as envisaged under section 49(4)(b) (c) and (k) which leads us to the determination that the termination, though flawed due to procedural lapses, was lawful and justified. In the circumstances of this case and in the services of the Respondents shall stand terminated. The appeal succeeds on the issue of termination of the Respondents’ employment which was not wrongful. It fails, however, on the

process of termination which was flawed, hence the order we now give that the termination shall be a normal one.”

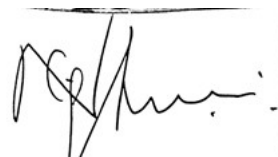
In the final analysis, the Respondent had a valid reason to dismiss the Claimants from their employment for gross misconduct. The process of disciplinary process followed by the Respondent was however visited by inordinate delay and was therefore flawed to that extent and did not satisfy the requirements of fairness in contravention of the disciplinary code of the respondent.

The fact of the matter is that the claimants remained under the employment of the respondent during this prolonged period of suspension and are entitled to refund of the basic salary deducted during this period. This will suffice to mitigate the inconvenience suffered by the claimants for being kept under suspension for a period of three years contrary to the disciplinary code of the respondent.

Accordingly, the suit lacks merit and is dismissed except the court orders the respondent to compute and refund the basic salary deducted from the claimants during the period of suspension if it was not paid to them upon dismissal within 30 days of this Judgment. The refund is payable with interest at court rates from date of judgment till payment in full.

The court finds this to be an appropriate case for each party to meet their costs of the suit considering all the circumstances of the case aforesaid.

Dated at Nairobi this **20th Day of November 2025.**

A handwritten signature in black ink, appearing to be a cursive name, is written on a white background. The signature is positioned above a horizontal blue line that spans the width of the page.

Mathews Nduma
JUDGE

Appearance:

Mr. Nthiga for Claimants

Mr. Lemiso for Respondents

Mr. Kemboi – Court Assistant

ORIGINAL