

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E251 OF 2024

KELVIN MWANGI NDAMBIRI.....CLAIMANT
VERSUS
KENYA REVENUE AUTHORITY.....RESPONDENT

JUDGMENT

1. The Claimant avers that he was employed by the Respondent on 1st February 2016 as an iTax Support Officer, and that at the time of his termination from employment, he was serving in the Respondent's Domestic Taxes Department.
2. The Claimant further asserts that he was initially hired on contract in 2016, with his confirmation contingent upon satisfactory performance.
3. The Claimant contends that the Respondent's established practice is that recruitment amounts to permanent and pensionable employment unless an employee is disqualified on grounds of poor performance or lawfully terminated. He asserts that his performance was never negatively assessed and thus, there was no justification for the termination of his employment.

4. He avers that he had a legitimate expectation that, consistent with the Respondent's established practice, his employment would be permanent and pensionable and would not be terminated prematurely.
5. The Claimant further states that contrary to his expectation of being placed on permanent and pensionable terms at the conclusion of his initial contract, the Respondent instead issued him with a contract extension in February 2019 for a further three years effective 1st March 2019. In his view, this action was discriminatory and unfair.
6. He further avers that throughout the duration of his employment, he was never subjected to any disciplinary process nor issued with any warning letter in relation to the performance of his duties.
7. The record bears that the Claimant was dismissed from employment with effect from 9th December 2021. According to the Claimant, the Respondent's decision to terminate his employment was wrongful, as there was no justifiable basis for summarily dismissing him.
8. It is against this background that the Claimant seeks the following reliefs:

a) Reinstatement back to the position held at the time of termination without loss of any benefits.

In the alternative

- b) A declaration that the termination was unfair and wrongful.***
- c) An order for payment of Kshs 351,000 being three months' salary for the unserved period of the contract.***
- d) An order for 12 months' salary compensation for unfair and wrongful termination.***
- e) The costs of this suit and interests.***

9. In response to the Memorandum of Claim, the Respondent disputes the Claimant's assertion that he served faithfully and diligently. It maintains that the Claimant was found culpable of gross misconduct, which warranted his summary dismissal.

10. The Respondent further asserts that the Claimant was employed under a fixed-term contract, with continued employment being contingent upon satisfactory performance. It maintains that it was under no obligation to extend the Claimant's contract or confirm him to permanent and pensionable terms.

11. The Respondent further states that the Claimant was placed on a six-month performance improvement plan owing to unsatisfactory performance during the contract period.

12. The Respondent further contends that the Claimant ended the fixed-term contract before it lapsed and that there was no written assurance that he would be absorbed into permanent and pensionable terms upon its expiry.

13. The Respondent further asserts that the Claimant was found guilty of gross misconduct and was summarily dismissed. It maintains that the termination was procedurally fair and lawful, and accordingly, prays that the Court dismiss the Claim with costs.

14. In reply to the Memorandum of Response, the Claimant has reaffirmed the assertions in his Memorandum of Claim, insisting that he consistently performed his duties to the Respondent's satisfaction. He further contends that he was not singled out for underperformance, noting that all personnel, including the sector manager, were subjected to the performance improvement plan.

15. The Claimant has termed the Respondent's Response as a sham and has urged the Court to dismiss it and enter judgment in his favor as prayed in the Memorandum of Claim.

16. The matter proceeded for hearing on 27th March 2025 and 12th June 2025, during which both sides called oral evidence in support of their respective cases.

Claimant's Case

17. The Claimant testified in support of his case as CW1, initially adopting his witness statement as his evidence in chief. He also produced the list and bundle of documents filed alongside the Memorandum of Claim as exhibits before the Court.

18. The Claimant testified that on 9th December 2021, he was summarily dismissed from employment based on alleged malpractices, including soliciting, demanding, and receiving bribes from taxpayers. He asserted that none of these allegations were investigated or proven.

19. He further stated that he was subjected to extensive investigations by the Directorate of Criminal Investigations (DCI) regarding accusations of criminal conduct, but no evidence was found to hold him culpable.

20. The Claimant added that he was also investigated for allegedly assisting taxpayers to evade taxes by issuing tax compliance certificates to non-compliant taxpayers. However, the DCI concluded that he had no case to answer.

21. Outlining the chronology leading to his dismissal, the Claimant explained that he was first invited for statement recording on 25th March 2021 by the Intelligence and Strategic Office (ISO) concerning his knowledge of a former colleague while he was at the company's registry.
22. During the inquiry, he was shown five PINs, two KRA tasks, and amounts of money (Sh.6,000 and Sh.500) allegedly sent to his former colleague. He clarified that these contributions were part of a mutual arrangement ("merry-go-round") and that the PINs and KRA tasks related to requests for approval for the elderly and Persons Living with Disabilities.
23. On 22nd April 2021, the ISO seized his personal mobile phone at his workstation, and on 27th April 2021, he was again invited for statement recording regarding allegations of soliciting and receiving bribes. The Claimant denied these allegations, stating he had no authority to issue Tax Compliance Certificates.
24. The Claimant further stated that on 13th September 2021, he received a letter from the Human Resources Manager containing allegations against registry staff for soliciting and receiving bribes. He responded to this letter and was subsequently invited on 19th January 2021 to appear before a disciplinary panel on 27th October 2021, which he attended.

25. He averred that on 9th December 2021, upon returning from paternity leave, he received a call from the Human Resources Manager to collect a letter, which turned out to be his Summary Dismissal letter.

26. The Claimant contended that his termination was unfair and violated his rights, as it was based on unsubstantiated accusations, assumptions, suspicions, and conjecture.

27. He also contended that he was never interdicted pending investigations and continued working until he received the termination letter.

28. The Claimant stated that he appealed the decision to terminate his employment, outlining key issues for consideration, but the appeal was inadequately considered and ultimately rejected via a letter dated 29th March 2022.

Respondent's Case

29. On its part, the Respondent called **Cecily Mumbi Wairimu** and **Jackson Kimeu** who testified as RW1 and RW2, respectively. RW1, Cecily Mumbi Wairimu, introduced herself as a Supervisor in the Respondent's Intelligence & Strategic Operations (I&SO) Department. Equally, she adopted her witness statement to constitute her evidence in chief and also tendered the investigation report filed on behalf of the Respondent as an exhibit before the Court.

30.RW1 testified that investigations were initiated following intelligence indicating that certain officers of the Respondent were facilitating tax evasion through the irregular issuance of Tax Compliance Certificates to non-compliant taxpayers.

31.She further averred that it was established that staff based at the Sheria House Desk-DTD were soliciting and receiving bribes from taxpayers to approve newly registered corporate PINs for the West, South, East, and North Nairobi Tax Service Offices.

32.RW1 added that on various dates between 1st August 2018 and 1st May 2019, the Claimant, as part of the Sheria House staff, was suspected of receiving bribes totaling Kshs. 2,132,910, of which Kshs. 894,863 was allegedly received from employees of the Attorney General's Office.

33.The investigation further established that while serving as an officer at the Sheria Desk -Tax Payer Services/Tax Base Expansion (TPS/TBE) within the Domestic Taxes Department, the Claimant engaged in malpractices.

34. RW1 further averred that, based on the findings of the investigation, a recommendation was made to the Deputy Commissioner-Human Resources to institute disciplinary action against the Claimant, as he was found to have contravened the Respondent's Code of Conduct.

35. **Mr. Jackson Kimeu**, who testified as RW2, identified himself as an Assistant Manager in the Respondent's Human Resource Division. Similarly, RW2 adopted his witness statement as his evidence in chief and produced the list and bundle of documents filed on behalf of the Respondent as exhibits before the Court.

36. RW2 testified that on 27th April 2021, the Deputy Commissioner of Human Resources received an investigation report from the Commissioner of I&SO, which alleged that staff within the Domestic Taxes Department, particularly those at the Sheria Desk, were involved in soliciting and receiving bribes from taxpayers.

37. The report indicated that during his tenure at the Sheria Desk-Tax Payer Services/Tax Base Expansion (TPS/TBE) within the Domestic Taxes Department, the Claimant engaged in multiple malpractices.

38.RW2 averred that the Claimant was subsequently addressed via a letter dated 13th September 2021, directing him to show cause why disciplinary action should not be taken against him for the alleged malpractices. He responded to this show-cause letter through a letter dated 5th October 2021.

39. Thereafter, he was invited for oral representation by a letter dated 19th October 2021, with the disciplinary meeting ultimately taking place on 27th October 2021.

40. Following the disciplinary proceedings, the Claimant was found culpable of the alleged offences and was summarily dismissed through a letter dated 9th December 2021. The dismissal was based on his contravention of specific clauses within the Respondent's Code of Conduct and Section 44(4)(c) and (g) of the Employment Act.

41. RW2 added that the Claimant exercised his right to appeal against the summary dismissal through a letter dated 18th March 2022. However, his appeal was subsequently rejected via a letter dated 29th March 2022, on the grounds that no new evidence had been presented to justify a review of the Respondent's earlier decision.

42. In RW2's view, the Respondent acted procedurally, fairly, and lawfully in summarily dismissing the Claimant.

Submissions

43. The Claimant submitted that he was not afforded an opportunity to appear or be heard during the appeal process, if at all. He argued that in the absence of evidence showing that the appeal was heard or considered, it should be concluded that the Respondent failed to provide him with the necessary facilities to adequately defend himself against the allegations.

44. The Claimant further argued that he was never formally charged. He contended that had there been credible evidence supporting the serious criminal allegations levelled against him, the Office of the Director of Public Prosecutions (ODPP) would have pursued criminal charges, given the nature of the accusations.

45. Regarding the reasons advanced for his termination, the Claimant submitted that the Respondent was merely speculating, casting various accusations against him.

46. He further argued that no warning or cautionary letter was ever issued to him despite the severity of the allegations. He also noted that at no point was he suspended or interdicted during the investigation period. In his view, if the Respondent had genuinely believed in the truth of the allegations, interim administrative measures would have been taken.

47. The Claimant submitted that the Respondent's agents visited his workstation and confiscated his phone. He argued that the text messages and M-Pesa records allegedly extracted from the device should be excluded from the Court's consideration under Article 54(4) of the Constitution. To support this position, he relied on the case of **David Ogolla Okoth v Chief Magistrate Court Kibera & 2 Others [2016] eKLR**.

48. He further submitted that the allegations against him were based on private data unlawfully obtained without a court order.

49. The Claimant urged the Court to award him damages, adding that it was admitted on record that the Respondent accessed his private information without a court order.

50. On the other hand, the Respondent submitted that the Claimant's summary dismissal was lawful, fair, and justified under the Employment Act. It argued that it had satisfied its statutory obligation under Section 43 by demonstrating that the reason for termination was valid and based on a genuine belief supported by credible evidence.

51. Relying on the case of **Ondari v NHIF [2025] KECA 687 (KLR)** and **Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others**, the Respondent submitted that an employer needs only to hold a genuine and reasonable belief, founded on proper inquiry, that the reason for termination existed. It added that the Court's role is not to substitute its own view for that of the employer, but to assess whether the employer acted reasonably and in good faith based on the evidence before it.

52. The Respondent maintained that it genuinely believed the Claimant had engaged in bribery and dishonesty, constituting gross misconduct under Section 44(4)(g) of the Employment Act. It stated that this belief was formed after reviewing the investigation report and corroborating evidence, and not on speculation.

53. The Respondent further submitted that the Claimant's conduct breached its Code of Conduct and that the disciplinary action taken was consistent with institutional policy and proportionate to the misconduct.

54. Citing the case of **Kenya Power & Lighting Company Ltd v Aggrey Lukorito Wasike [2017] eKLR**, the Respondent argued that there is a distinction between administrative disciplinary processes and criminal proceedings, noting that the standard of proof in employment matters is the balance of probabilities, not proof beyond reasonable doubt.

55. The Respondent further argued that the Claimant's data privacy claim is unpleaded, lacks merit, and is procedurally incompetent as it was not raised in the Memorandum of Claim. For this proposition, reliance was placed on the decision in **IEBC v Stephen Mutinda Mule [2014] eKLR**.

56. The Respondent further submitted that it neither confiscated nor extracted data from the Claimant's phone, asserting that the forensic examination was conducted by the DCI, a lawful state agency. It maintained that the information was lawfully obtained by the police and it legitimately relied on the same.

57. The Respondent further posited that it scrupulously followed the procedure set out in its Code of Conduct and the Employment Act when dismissing the Claimant.

Analysis and Determination

58. Having reviewed the pleadings by the parties, the evidentiary material on record, and the rival submissions, the Court has isolated the following issues for determination:

- a) Whether the Respondent has demonstrated that there was a valid and fair reason for terminating the Claimant's employment;**
- b) Whether the Claimant was afforded procedural fairness prior to the termination of his employment;**
- c) Whether the Claimant is entitled to the reliefs claimed.**

Valid and Fair reason for termination of employment?

59. The determination of this issue is guided by Sections 43 and 45 of the Employment Act, which require that an employer demonstrate substantive justification for terminating an employee from employment.

60. Specifically, Section 43(1) enjoins an employer to prove the reasons for termination; failure to do so renders the termination unfair. Worthy to note is that under Section 43(2), such reasons are matters the employer genuinely believed to exist at the time of the termination.

61. Further, Section 45(2)(a) and (b) provides that a termination is unfair if the employer fails to prove that the reason for dismissal was valid, fair, and related to the employee's conduct, capacity, or compatibility, or based on its operational requirements.

62. In the present case, the record bears that the Claimant's employment was terminated on grounds of dishonesty and lack of integrity. Specifically, it was alleged that the Claimant engaged in the following malpractices:

a) *That he fraudulently received a total of Kshs.894,863.00 between 1st August, 2018 and 1st May 2019 through his phone number 254723311334 from the employees of the Attorney General's (AG) office Business Registration Services Department as an inducement to facilitate issuance of Corporate PINs.*

b) *That he sent numerous tasks on Corporate PIN approvals to Ms. Diana Thomi Kirigo P/No.9901 an iTax Support Officer based at Sheria Desk-Tax Payer Services/Tax Base Expansion (TPS/TBE) Domestic Taxes Department and upon approval of the said PINs he would send her money through her proxy phone number*

+254708659006 registered under Mr. David Chege being a benefit for facilitating the PIN approvals.

c) That on 3rd December 2018 he sent Diana a text indicating, "usisahau huto tutask nipate ya mafuta". On the following day 4th December 2018, Diana sent him a PIN number P051747114E belonging to Kidron Valley Developers Limited after which he sent Diana Kshs.500. This implies that he was expecting a benefit after facilitating completion of the PIN tasks.

d) That on 26th November 2018, he sent a text to Diana reading "interpoint supplies and renovations Limited, east of Nairobi, angel saidia". On the same day, Diana sent him a PIN number P051745338N and on the following day she sent another PIN number P051745491V upon which he sent Diana Kshs.6000.

63. The Claimant denied any involvement in the alleged malpractices, asserting that the allegations were investigated and found to be unsubstantiated. He further stated that the DCI conducted its own investigation into the Respondent's claims and concluded that he had no case to answer.

64. In his response to the Notice to Show Cause, the Claimant acknowledged receiving money from employees of the Attorney General's Office where he was stationed. He explained that the funds were in connection with

referring individuals to these employees for company registration. The Claimant further stated that, over time, he requested soft loans from them, some of which he repaid, while others were waived.

65. The Claimant further admitted that his colleague, **Diana Thomi**, assisted him with the registration and issuance of certain PINs (P051747114E, P051745338, P051745491V) due to their cordial working relationship. He explained that the tasks were meant to be approved through her station. Regarding the funds received, he stated that the Kshs 500/= was for lunch, while the Kshs 6,000/= was contributed to table banking to help them learn how to save.

66. It is noteworthy that the Claimant did not dispute sending the following message to Diana on 3rd December 2018: “*usisahau huto tutask nipate ya mafuta.*”

67. In his submissions, the Claimant has urged the Court to disregard the evidence presented by the Respondent, specifically the messages extracted from his mobile phone and the M-Pesa transaction records. Notably, the Claimant did not raise this objection in his Memorandum of Claim, despite the Notice to Show Cause and the summary dismissal letter containing the information extracted from his mobile phone. Consequently, the Claimant’s objection is raised belatedly.

68. It is also trite that submissions do not constitute evidence. What's more, during the trial, the Claimant did not object to the Respondent's production of the said evidence.

69. In any event, the Claimant did not dispute having received or sent the money, nor did he deny sending a message to Diana on 3rd December 2018 stating, "*usisahau huto tutask nipate ya mafuta.*"

70. The Court has taken into account the Claimant's admission that he received money from employees of the Attorney General's Office, his acknowledgment that he sent Diana tasks for the issuance and registration of PINs, and his message to Diana reminding her not to forget the tasks so that he could receive fuel money. These factors lead the Court to conclude that the money received by the Claimant from the employees at the Attorney General's Office and sent to Diana was intended as an inducement to facilitate the processing of the PINs by Diana.

71. Indeed, the Claimant's message of 3rd December 2018 to Diana, connecting the "*tasks*" to "*fuel money*", indicates that the registration and issuance of PINs by Diana was undertaken for personal financial gain.

72. Furthermore, during cross-examination, the Claimant admitted that Diana was not his supervisee and that there was no policy permitting the delegation of PIN approvals. Consequently, there was no plausible explanation from the Claimant for requesting Diana to register and issue PINs at her station.

73. Further, the Claimant's assertion that he was investigated and found not culpable by the DCI, hence confirming his innocence, does not hold. I say so, bearing in mind the applicable standard of proof in employment disputes.

74. In considering the standard of proof in employment disputes, the Court of Appeal in **Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR** stated as follows:

“The standard of proof is on a balance of probabilities, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it genuinely believed to exist, causing it to terminate the employee's services.”

75. In applying this standard to the present case, the Court finds that the Respondent was not obligated to prove, beyond a reasonable doubt, that the Claimant engaged in the alleged malpractices.

76. In light of the Claimant's position and responsibility of revenue collection within the Respondent entity, it goes without saying that he was entrusted with a duty to act at all times with the highest standards of honesty and integrity.

77. Considering the circumstances of this case, particularly the Claimant's conduct, it is highly probable that the trust the Respondent had placed in him had dwindled.

78. It is this Court's respectful view that the circumstances of this case do not portray the Claimant as an honest employee and, as a result of his own conduct, he provided the Respondent with a fair and valid reason to terminate his employment.

79. In sum, the Court is satisfied that the Respondent has established, on a balance of probabilities, that it had a fair and valid reason to terminate the Claimant's employment based on his conduct.

Procedural fairness?

80. Turning to the issue of procedural fairness, Section 45(2)(c) of the Employment Act provides that for a termination to be fair, it must comply

with a fair procedure. In this regard, Section 41 requires that an employer afford an employee a hearing before termination. This process involves notifying the employee of the allegations against them and subsequently giving him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a union representative.

81. The record bears that the Claimant was issued with a Notice to Show Cause dated 13th September 2021, requiring a response within seven days.

82. The Claimant submitted his response through a letter dated 5th October 2021. He was then invited to attend a disciplinary hearing and was informed of his right to be accompanied by a fellow employee of his choice, as well as to bring any documents supporting his case.

83. Following the disciplinary hearing, the Claimant was summarily dismissed from employment.

84. In considering the significance of Section 41 of the Employment Act, the Court of Appeal stated as follows in **Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR:**

“Four elements must thus be discernible for the procedure to pass muster:-

- (i) an explanation of the grounds of termination in a language understood by the employee;***
- (ii) the reason for which the employer is considering termination;***
- (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;***
- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”***

85. Applying the foregoing binding precedent to the present case, I am satisfied that in effecting the Claimant's termination from employment, the Respondent complied with the minimum requirements of a fair hearing as prescribed under Section 41 of the Employment Act.

86. It is also notable that the Claimant's contention that he was not afforded a proper hearing during the appeal process is not supported by law. While an appeal is a crucial part of the disciplinary process, it must be appreciated that there is no statutory requirement for the employee to be heard in person.

87. In light of the foregoing, the Court finds that the Claimant's termination from employment was conducted in accordance with the procedure prescribed under Section 41 of the Employment Act. Accordingly, the Respondent cannot be faulted.

Reliefs?

88. Having found that the Claimant's termination was for a fair and valid reason and in accordance with the procedure prescribed under Section 41 of the Employment Act, the claim for compensatory damages and payment for the unserved contract period cannot be sustained. Similarly, the claim for reinstatement fails.

Orders

89. Accordingly, the claim for unfair termination is dismissed, with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 1st day of December 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Mutua instructed by Mr. Kimuli

For the Respondent Ms. Njoroge

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL