



**Moranga v Kisii County Public Service Board (Cause E010 of 2025)  
[2025] KEELRC 3519 (KLR) (9 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3519 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
CAUSE E010 OF 2025  
NZIOKI WA MAKAU, J  
DECEMBER 9, 2025**

**BETWEEN**

**HELINA KEMUNTO MORANGA ..... CLAIMANT**

**AND**

**KISII COUNTY PUBLIC SERVICE BOARD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant commenced the suit against the Respondent averring that she employed by the Respondent and served as the Chief Officer Youth, Sports, Culture, Arts and Social Services. She averred that her employment was as per the appointment letter dated 23<sup>rd</sup> January 2023 which also designated her as the accounting officer of the said Department. The Claimant averred that she was dutifully discharged her duties until 21<sup>st</sup> August 2023 when she received a show Cause letter wherein it was alleged that she had been involved in misconduct, namely that she had on 11<sup>th</sup> August 2023, she had applied for and authorized imprest of Kshs. 7,372,300/- as per diems for the KICOSCA games participants. The Claimant averred that it was also alleged she failed to exercise due care and attention in performance of her duties and thus acted negligently in breach of her duties as enshrined in the provisions of the *Public Finance Management Act* 2012 and the Public Procurement and Disposal of Assets Regulations 2020. It was also alleged that she had unilaterally certified an expenditure of Kshs. 358,000/- in favour of M/S Gerar Supplies Limited for supply of a defective laptop and smartphone. It was averred that in response to the show cause letter, the Claimant replied vide a letter dated 28<sup>th</sup> August 2023 giving responses to the subject allegations. The Claimant averred that despite her response, the Respondent suspended her from service as per the letter dated 25<sup>th</sup> December 2023.
2. The Claimant avers she was thereafter invited to a disciplinary hearing slated for 3<sup>rd</sup> April 2024 which the Claimant asserted was botched and that in total disregard of the Claimant's averments and/or defence, the Respondent went ahead to dismiss her from its service in a dismissal letter dated 9<sup>th</sup> April 2024 giving a number of reasons for the dismissal.



3. Dissatisfied with the decision rendered by the Respondent, the Claimant averred that she lodged an appeal with the Public Service Commission vide PSC Appeal No. E038 of 2024 in line with the provisions of the Public Service Commission (County Appeals Procedures) Regulations which cumulated to a decision dismissing the Claimant's appeal precipitating this suit.
4. The Claimant thus sought for;
  - a. An order that the termination of the Claimant's employment by the Respondent was un - procedurally unfair and unlawful;
  - b. An order for unconditional reinstatement of the Claimant to her position as the Chief Officer, Youths, Sports, Culture, Arts and Social Services of the Kisii County Government;
  - c. The Honourable Court be pleased to award the Claimant 12 Months' compensation/damages for the wrongful and unfair termination amounting to Kshs. 2,635,680/- tabulated as (Kshs. 219,640/- x 12);
  - d. 47 Months' salary compensation for unlawful loss of employment and being the salary for the unexpired term of the employment contract amounting to Kshs. 10,323,080/-.
  - e. Aggravated and Exemplary damages;
  - f. Costs of the suit with Interest;
  - g. Any other relief that this Honourable Court will deem fit to grant.
5. The Respondent's defence was not on file in terms of Rule 24 of the Employment and Labour Relations Court (Procedure) Rule 2024. However one is on the portal, the provenance of which is impugned by the failure of the counsel for the Respondent to make payment for the notice of change of advocates he filed on the CTS on 15<sup>th</sup> July 2025. In the defence, it was alleged that the Claimant was non-suited against the Respondent as the determination by the Public Service Commission was deemed sound. The Respondent sought the dismissal of the claim with costs.
6. The parties presented witnesses being the Claimant and the County Public Service Board Secretary. The Claimant asserted she

#### Submission

7. The Claimant submits that the issues for determination are
  - i. Whether the process leading to the dismissal of the Appellant from service with the Respondent was legally and procedurally done?
  - ii. Whether the Claimant is entitled to the reliefs sought?
8. The Claimant submits that it is not in dispute that he was dismissed on the basis of the allegations captured in the show cause letter and the impugned dismissal letter. It is also on record that the said Claimant was invited to a sham disciplinary hearing where she responded thereto, her request to be represented denied and her response deemed unsatisfactory hence the dismissal. The Claimant averred that after his dissatisfaction with the Respondent's decision, he appealed vide PSC Appeal No. E038 of 2024 in line with the requirements of section 77 of the [County Governments Act](#) and in fulfilment of the doctrine of exhaustion. The Claimant averred that despite the evidence rendered, the Public Service Commission dismissed her appeal vide its decision dated 19<sup>th</sup> December 2024. The Claimant averred that from the decision crystal clear that the Commission never considered the allegations levelled against the Claimant, the evidence produced by parties before confirming the dismissal and held that



the disciplinary process was fair. The Claimant submitted that the law on termination of contracts of employment is anchored on the Employment Act section 41(1) of the Act provides as follows: -

"Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation."

9. The Claimant submitted that as admitted in court by the Respondent herein, the procedure regarding disciplinary action against its members is elaborately captured in Kisii County Government Human Resource Policies and Procedure Manual for the County Government Public Service Board 2018. It was submitted that provision K4 (l)(iii) above gives a mandatory 21-day period for the Claimant herein to have replied to the show cause letter. The Claimant submitted that the show cause letter dated 21<sup>st</sup> August 2023 only gave him seven (7) days to reply to the allegations, contrary to the mandatory disciplinary timelines.
10. The Claimant submits further that the requisite County Human Resource Management Advisory Committee was never formed to investigate the matter and neither was a report filed therein. It was also submitted that there were no witness statements, neither was there any evidence tendered by the Respondent in support of the allegations levelled against the Claimant at the County Service Board level and before the Public Service Commission. The Claimant submitted that in carrying out the impugned disciplinary proceedings, the Respondent herein grossly violated its own provisions and those of the Constitution of Kenya as well as the Employment Act 2007.
11. The Claimant submitted that the tender process was in line with the law and when the contractor supplied goods that were not up to specification the same were rejected. She submitted that she was only involved in awarding the said contract to the supplier after vetting by the requisite Ad hoc Committee. It was submitted that upon the award of the tender, the said supplier delivered the goods to the County for inspection. It was submitted the Claimant had a duty to establish the Inspection and Acceptance Committee who were in turn to evaluate the goods before payment was to be effected and that upon evaluation of the subject goods by the Committee, the goods were found to be defective and thus payment could not be made. The Claimant submits that the Contractor was therefore advised to pick the goods as they did not meet the set standards and the contractor picked the defective goods as evidenced from the delivery note on 25<sup>th</sup> January 2024. The Claimant submitted that the Respondent is blowing hot air by claiming that the goods were not to be delivered at the Claimant's office when the said Claimant is responsible for formulating the Inspection and Acceptance Committee which does not have an office. The Claimant further submits the payment voucher she prepared was substituted with another which was ultimately used to make payment. She submitted that the imprest she had prepared never saw the light of day and she was surprised to discover that a counter imprest No. 4790718 of Kshs. 8,367,600/- had been formulated and approved without her consent and/or knowledge and payment voucher No. 5220-0006 issued.
12. The Claimant submitted that the fair administrative safeguards she was entitled to were breached by the Respondent as she was not accorded her rights under the Fair Administrative Actions Act. She cited the case of Kenneth Njiru Njorani v Dodhia Packaging Limited [2014] KEELRC 812 (KLR) where the Court held that

"...in making this finding the Court recognizes termination has constitutional basis as provided for in Article 47(1) of the Constitution which states that every person has the right



to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Managerial decisions by employers are properly administrative actions within the province of Article 47 of *the Constitution* on the right to fair administrative action. *The Constitution* breaks the curtains and it does not matter whether the employer is in public service or private sector. *The Constitution* in Article 10 clearly states that the national values and principles of governance apply to all persons and the principles and values include human rights. Thus in this instant case, the respondent was bound to accord the claimant the right to fair administrative action through observation of the rules of natural justice and as expressly envisaged in Section 45 (5) of the Act."

13. The Claimant submitted that she entered into the instant contract of employment with the Respondent which was to be valid for a period of 5 years from 23<sup>rd</sup> January 2023 to 23<sup>rd</sup> January 2028 and that by dint of the impugned dismissal, the contract was cut short by 47 months. It was submitted that it was the Claimant's legitimate expectation that the contract of employment would to expire after the 5-year term as the said terms of engagement did not capture a termination clause to warrant any alteration of her service with the Respondent. The Claimant submitted that it will therefore be just for her to be awarded the unutilized salary equivalent to the unutilized months.

14. On the issue of general damages, she submitted that when it comes to wrongful termination or dismissal, this was addressed in the case of *Margaret Ayuma Katungu v Attorney General* [2018] eKLR where the court held that;

"38. In view of the said violations to claimant's rights under the contract of service, constitution and the PSC Regulations, I award her Kshs. 4,000,000 as general damages. In awarding the said compensation I have considered that the suffering inflicted on the claimant in *Dr Ezekiel Okemwa* case was more serious than in this case."

15. The Claimant thus submits she is entitled to the reliefs sought and placed reliance on the case of *James Orenge v Attorney General Nairobi HCCC No. 207 of 2002* where it was held that

".... The case law is clear that damages are designed not only to compensate the Plaintiff, but also deter wrongful behaviour. In *Rookes v. Bernard* (supra) the Court elaborated on the use and importance of exemplary damages: "it serves a valuable purpose in restraining the arbitrary and outrageous use of executive power." The Court emphasizes the use of exemplary damages in cases such as this one:

"There are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law and thus affording practical justification for admitting into the civil law a principle which ought logically to belong to the criminal ... The first category is oppressive, arbitrary or unconstitutional action by the servant of the government .... where one man is more powerful it is inevitable that he will try to use his power to gain his ends ... servants of the government are servants of the people and the use of their power must always be subordinate to their duty of service .... "[Emphasis added].

Taking into account the need for deterrence of this sort of behavior, especially by those in positions of power similar to the Defendants, and due to the lack of evidence and explanation provided by the Defendants, and the overwhelmingly innocent behavior of the Plaintiff, I find that the events that took place on 4<sup>th</sup> February, 2001 were unnecessary, unconstitutional, and malicious, and that the Defendants are fully liable for damages



suffered by the Plaintiff under various heads outlined in this Judgment. Without breaking these down into different heads, I would award a global sum of Kshs.5,000,000 (Five Million) to the Plaintiff with costs and interest .... "

16. The Claimant thus urged the Court to find in her favour and make the awards as sought in her claim.

Submissions by the Respondent

17. The Respondent submitted that the issues for determination were:

- a. Whether the Respondent had valid reasons to terminate the Claimant's employment?
- b. Whether the Claimant was unfairly or unlawfully dismissed from employment?
- c. Whether the Claimant deserves the reliefs sought?

18. The Respondent submitted that in line with section 45 of the Employment Act, the burden of proving that there were valid reasons for the termination of the Claimant lies with it. The Respondent submitted that the Claimant's employment was terminated on grounds of misconduct while performing her duties as an Accounting Officer by failing to exercise due care and attention in the performance of her duties. Citing the case of National Union of Water and Sewerage Employees v Meru Water & Sewerage Service ELRC Cause No 44 of 2012 (unreported), where Abuodha J. defined gross misconduct as "an act of misconduct serious enough to justify the employee's immediate dismissal "

19. The Respondent submitted that it is not in dispute that the Claimant was issued with a Show Cause Letter dated 21<sup>st</sup> August 2023 and in the letter the reasons were stated as to why the allegations of misconduct were being levelled against her. The Respondent submits the show cause letter was preceded by preliminary investigations and that the Claimant duly responded to the show cause letter. The Respondent submitted that the Claimant's response to the show cause letter was found to be unsatisfactory hence she was issued with a suspension letter dated 28<sup>th</sup> December 2023 and further a letter dated 13<sup>th</sup> March 2024 inviting her to the disciplinary hearing held on 3<sup>rd</sup> April 2024 at the Respondent's offices. The Respondent submitted that there being no inspection on the goods supplied, no goods receivable note issued to the Supplier, the Claimant in the performance of her duties as an Accounting Officer received faulty and refurbished goods and certified and expenditure for their payment despite the goods falling short of the required specifications instead of immediately returning the goods to the Supplier. The Respondent submits that due to the foregoing, that it had valid reasons to terminate the employment of the Claimant.

20. The Respondent cited the case of Otieno v Kenya Petroleum Refineries Limited (Cause E078 of 2022) [2023] KEELRC 1264 (KLR) (18 May 2023) (Judgment) while expounding on the meaning of section 45 of the Employment Act stated that

- " 29. The threshold being that before termination of employment, an employer will be deemed to have a substantive justification for terminating employment if the employer genuinely believed that the matters that informed the decision to terminate employment existed at the time the decision was taken. There must exist a substantive ground/reason leading to termination of employment as held in Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] eKLR. 30. Also, the employer must have a reason that is just and equitable in the circumstances of the case the reason given must be valid and fair."



21. The Respondent submitted that the Claimant's conduct fell below the required standard of an Accounting Officer and the Respondent thus urged this Honourable Court to find that the Respondent had a valid reason for terminating her employment. As to whether the Claimant was unfairly or unlawfully dismissed from employment, the Respondent places its reliance on the Court of Appeal decision in Civil Appeal No. 127 of 2015, *Postal Corporation of Kenya v Andrew Tanui* [2019] eKLR in which Waki, Musinga and Kiage JJA held:

“It is our further view that section 41 provides the minimum standard of a fair procedure that an employer ought to comply with 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.”

22. The Respondent submits that the Claimant was granted an opportunity to respond to the allegations contained in the show cause letter, the Claimant duly responded to the said allegations wherein she did not dispute the period given to her to respond to the Show Cause letter. The Respondent submits the Claimant also did not request to be granted more time for her to respond.

23. The respondent submits that upon being informed that her response to the Show Cause letter was unsatisfactory, the Claimant was duly invited to a disciplinary hearing and she was informed that she could bring legal representation with her to the hearing should she wish to but chose not to. The Respondent submits that it therefore totally untenable for the Claimant to lament on the conduct of the hearing whereas she was granted a fair trial and an opportunity to be heard in accordance with the provisions of Article 47 of *the Constitution* of Kenya. Further, it was submitted, after deliberating on her case after the hearing, the allegations of gross misconduct as levelled against the Claimant were proved to the satisfaction of the disciplinary board and the Respondent was duly notified of the decision to have her dismissed from the County Public Service and the right to appeal, hence the Respondent cannot be faulted. The Respondent submitted that it had complied with all the strictures of the law and granted the Claimant all her rights and therefore she was not entitled to any of the reliefs she had sought in her claim. The Respondent urged the dismissal of the Claimant's suit with costs.

#### Disposition

24. The Court has considered the pleadings as filed despite the failure by the Respondent to comply with the Rules of the Court, the testimony adduced and the submissions made. The law on termination of employees is well articulated in both the submissions by the Claimant and the Respondent. Briefly put, the Respondent has a burden to demonstrate the procedure adopted in the termination was in accord with the law – Constitution of Kenya, the *Employment Act* and the Fair Administrative Actions Act and the procedures under the County Public Service Board.

25. The Claimant was accused of processing an imprest that unjustly enriched herself and a few other officials who were included in the list for payment of per diems for the KICOSCA games. The Court has evaluated the imprest and notes the imprest that was actually processed was not the one the Claimant had prepared but rather imprest No. 4790718 for a sum of Kshs. 8,367,600/- which was approved without the Claimant's involvement or consent and a payment voucher No. 5220-0006 issued. In my considered view, even though the Claimant had initially proposed to have a similarly large sum processed, this was not actualised. The other grouse was the issue of the goods procured. It is clear the goods were returned with no loss to the Respondent. There was no evidence of payment



and though the process was faulty, the Claimant is the victim of poor systems at the Respondent. I acknowledge she had a role to play as the accounting officer and for that her compensation in this suit will be limited.

26. The Court does not agree to award the Claimant exemplary damages or payment for the balance of her contract. This is because the Respondent undertook a disciplinary process that was truncated and instead of availing the Claimant the safeguards under the Human Resource policy gave the Claimant short periods to respond to the show cause and set up a hearing despite the manifest failure in adherence to the timelines. As the Respondent did not grant the Claimant the full benefit of the law, it will be condemned to pay compensation. The Claimant does not succeed in getting reinstatement to her position as the sum that will be her compensation should ameliorate the loss.
27. The Claimant is notably able to work and therefore the Court grants the following relief:
- a. One month's salary as notice – Kshs. 219,640/-
  - b. 10 month's salary as compensation for the unprocedural dismissal – Kshs. 2,196,400/-.
  - c. Costs of the suit.
  - d. Interest on the sums in (a) and (b) above at court rates from the date of judgment till payment in full.
  - e. A certificate of service in terms of section 51 of the *Employment Act*.
- Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 9<sup>TH</sup> DAY OF DECEMBER 2025.**

**NZIOKI WA MAKAU, MCIArb.**

**JUDGE**

