



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISII

CAUSE NO. E011 OF 2025

CASPER

ONDORO.....**CLAIMANT**

T

VERSUS

KISII

COUNTY

GOVERNMENT.....**RESPONDENT**

JUDGMENT

1. The Claimant sued the Respondent averring that he was employed by the Respondent as the Chief Officer Public Participation, Disaster Management and Special Programs vide the Letter of Appointment dated 23rd January 2023 and

designated as the accounting officer of the said Department. The Claimant averred that he was dutifully discharging his responsibilities until 21st August 2023 when he received a show cause letter wherein he was alleged to have been involved in misconduct; that in particular, on 26th June 2023, he allegedly authorized a payment voucher to MS BOINYAKS COMPANY LIMITED amounting to Kshs. 2,999,760/-. The Claimant averred that he responded vide his letter of 24th August 2023 but despite his response the Respondent suspended him from employment on 25th September 2023. He averred that he was called for what he termed as a sham disciplinary hearing on 3rd April 2024 culminating in his dismissal on 9th April 2024. The Claimant averred that the dismissal was on two grounds:

- a. Certification of expenditure and authorization of payment amounting to the sum of Kshs. 2,999,760/- to BOINYAKS COMPANY LTD for completion of drainage works in Bombaba Ward without a completion certificate.
- b. Failure to ensure due diligence and due care in performance of his duties as a Chief Officer.

2. The Claimant averred that dissatisfied with the decision rendered by the Respondent, lodged an appeal with the Public Service Commission vide PSC Appeal No. E039 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. The Claimant averred that he had exhausted all other remedies before approaching this Honourable Court. The Claimant sought the following reliefs

- 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 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) General damages for unfair termination;
- f) Aggravated and Exemplary damages;
- g) Costs of the suit with Interest;

3. The Respondent in response filed a defence to the claim and

4. The Claimant and the Respondent's CEO testified and the parties were each to file submissions.

5. The Claimant submitted that the issues for analysis and determination are:

i. Whether the process leading to the dismissal of the Claimant from service with the Respondent was legally and procedurally done?

ii. Whether the Claimant is entitled to the reliefs sought?

6. The Claimant submits that the standard of proof required in employment claims was reiterated by the Court of Appeal in

Kenya Revenue Authority v Reuwel Waitihaka Gitahi & 2 others [2019] eKLR where it was held as follows:

"The standard of proof is on a balance of probability, 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. That is a partly subjective test."

7. The Claimant submitted that it is not in dispute that the dismissal was on the basis of the allegations captured in the show cause letter and the impugned dismissal letter. It is submitted that the Claimant was invited to a sham disciplinary hearing where he responded thereto, his request to be represented denied and the response deemed unsatisfactory hence the dismissal. It was averred that despite the evidence rendered by the Claimant, the Public Service Commission dismissed his appeal vide its decision dated 19th December 2024. From the said decision duly annexed in the claim, it was submitted that it is crystal clear that the Commission never considered the allegations levelled against the Claimant and the evidence produced by

parties before confirming the dismissal. It was submitted that the Commission plainly held that the disciplinary process was fair without touching on the allegations thereof. The Claimant averred that disciplinary action against an officer in his job group is elaborately captured in Kisii County Government Human Resource Policies and Procedure Manual for the County Government Public Service Board, 2018. He submitted that a Human Resource Management Advisory Committee was supposed to be formed to investigate the allegations against him. The Claimant submitted that this was not done in clear contravention of the Respondent's human resource policies and section 41 of the Employment Act. The Claimant submitted that under the HR Policies of the Respondent he was entitled to 21 days to respond to the allegations but his show cause letter instead gave him 7 days to respond. The Claimant submitted that there were no witness statements, neither was there any evidence rendered by the Respondent in support of the allegations levelled against the Claimant at the County Board level and the Public Service Commission. That in carrying out the impugned disciplinary proceedings, the Respondent grossly

violated its own provisions and those of the Constitution of Kenya as well as the Employment Act 2007. The Claimant submitted that the dismissal contravened sections 43 and 45 of the Employment Act. The Claimant submits as the Accounting Officer of the Department vide the letter dated 1st February 2023, part of his duties was to ensure that all contracts entered into by the department were lawful and complied with the Public Procurement and Disposal Act. It was submitted that it is not contested that the County Government of Kisii commenced the procurement process in regards to the project referred to as DRAINAGE WORKS ETONO-IGORERA DISPENSARY-IGORERA SATELLITE ROAD sometime in the year 2023.

8. The Claimant submitted that section 46 of the Public Procurement and Disposal Act establishes the Evaluation Committee which is an *ad hoc* committee comprised of independent members and tasked with dealing with the technical and financial aspects of a tender. He submits that in compliance with the said provision, vide the letter dated 26th May 2023 established the said Committee after the

creation of the Tender Opening Committee on 24th May 2023. The Claimant submits that section 48 of the Act further establishes the Inspection and Acceptance Committee which is tasked with immediately after the delivery of the goods, works or services-

- (a) inspect and where necessary, test the goods received;
- (b) inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract; and
- (c) accept or reject, on behalf of the procuring entity, the delivered goods, works or services.

9. The Claimant submits he formed the said Committee in fulfillment with the requirements of the Act and that the Evaluation Committee procured the subject tender and upon conclusion thereof, MS BOINYAKS COMPANY LIMITED were awarded the tender vide the notification of award dated 16th June 2023. He submitted that the works which were in respect to drainage works on the subject road were substantially completed as can be evidenced from the

Certificate dated 25th June 2023. It was submitted that as clearly indicated at the bottom of the Certificate, the same did not amount to completion of the works and/or disengagement of the parties.

10. The Claimant submits that he diligently complied with the requirements of the Act during the procurement process and that the contractors commenced work and completed the same sometime in early September 2023. The Claimant submits the Inspection and Acceptance Committee was tasked with inspecting the works after completion to ensure compliance with the terms of the contract. The Committee visited the site on the 4th September 2023 and a report dated the same day issued. The Claimant submitted that the report clearly indicates that the work was well done by the Contractor and a go ahead was given for payment of the contract sums as well as an inspection certificate issued and signed by the Committee members. The Contractor thereafter raised their invoice dated 6th September 2023. It was submitted that it is worth noting that the Claimant was issued with the show cause letter on 21st August 2023 and

thereafter stripped the duties of the accounting officer vide the letter by the Respondent dated 1st September 2023. The Claimant submits that he was therefore stripped of any rights whatsoever to issue a Completion certificate after the final inspection and/or authorize payment whatsoever.

11. The Claimant submits that his rights to fair administrative action were impaired and he placed reliance on the cases of **Kenneth Njiru Njorani v Dodhia Packaging Limited Cause No 431 of 2010 [2012] KEELRC 80 (KLR) (5 October 2012)** and **Dry Associates Ltd v Capital Markets Authority & another [2012] eKLR**. The Claimant submitted that on the strength of the decisions in **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."

12. The Claimant submits that he is entitled to the reliefs sought and makes reference to the case of **James Orengo v Attorney General Nairobi HCCC No 207 of 2002 (unreported)** where the Court stated as follows:

".... 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.... "

Taking into account the need for deterrence of this sort of behaviour, 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 behaviour of the Plaintiff, I find that the events that took place on 4th 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.... "

13. The Claimant cited the case of **Naqvi Syed Omar v Paramount Bank Limited & the Attorney General [2015] eKLR** and the case of **Ezekiel Nyangoya Okemwa**

v Kenya Marine & Fisheries Research Institute [2016]

eKLR. In the case of **Naqvi Syed Omar v Paramount**

Bank Limited & the Attorney General (*supra*) it was held

that *where an employee's attractiveness to potential*

employers is damaged or diminished as a result of the

actions of the employer in the process leading to termination

of employment, the Court may grant damages to

compensate the lost employability. The Claimant submitted

that the manner of dismissal and negative publicity

attendant to the process of dismissal has the potential to

damage or lower the employee's reception in the labour

market. In highly sophisticated, skilled and specialized labour

markets such as that to which the Appellant belongs,

employability is highly valued, is jealously guarded, and

where it is shown to have been deliberately injured, must be

adequately compensated. It was submitted that it is needless

to say, the reputation of the Claimant was toyed with as a

result of the defamatory dismissal occasioned by the

Respondent. The Claimant submits that he was looked upon

as a local beacon of determination and hard work in his

locality and the dismissal shunned him from the community

and as a result, his mental and psychological wellbeing were diminished. He thus seeks recompense by way of damages, a reinstatement to his employment as well as compensation for the unlawful termination in terms of section 49(1) of the Employment Act.

Respondent's submissions

14. The Respondent submits that the issues for determination are:

- 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?

15. The Respondent submits that the Claimant's employment was terminated on grounds of misconduct while performing his duties as an Accounting Officer by failing to exercise due care and attention in the performance of his duties. It cites the case of **National Union of Water and Sewerage Employees v Meru Water & Sewerage Service ELRC**

Cause No. 44 of 2012, where Abuodha J. defined gross misconduct as: -

"an act of misconduct serious enough to justify the employee's immediate dismissal "

16. The Respondent submits that it is not in dispute that the Claimant was issued with a Show Cause Letter dated 21st August 2023 and it stated the reasons why the allegations of misconduct were being levelled against him. The Respondent submits that the show cause letter was preceded by preliminary investigations and the show cause letter and the Claimant duly responded vide his letter 24th August 2025. The Respondent submits the Claimant's response to the show cause letter was found to be unsatisfactory hence he was issued with a suspension letter and further a letter inviting him to the disciplinary hearing held on 3rd April 2024 at the Respondent's offices. The Respondent submits the Claimant was issued with a Show Cause letter for certifying an expenditure in the sum of Kshs. 2,999,760/- by authorizing a payment voucher to MS BOINYAKS COMPANY LIMITED without a completion certificate as is by law

required. The Respondent submits the Claimant in total violation of his statutory duties approved and certified expenditure to be incurred by the County Government of Kisii without a completion Certificate. The Respondent submits that the Claimant did not have the Certificate of Completion at the time of the said approval and only presented a Certificate of Substantial Completion during the disciplinary hearing after being granted time during the hearing to look for it. Further, the Respondent submits it cannot ascertain the authenticity of the said Certificate of substantial completion as presented by the Claimant during the Disciplinary hearing. The Respondent submits the hearing of the Claimant's case showed that the said Certificate of substantial completion was addressed to a totally different postal address being PO BOX 6 - 40200 KISII as opposed to the County's official postal address being PO BOX 4550-40200, KISII. The Respondent submits it could not and still cannot attest to the credibility of the said document. The Respondent submits it had valid reasons for the termination of the Claimant and cites the provisions of section 45 of the Employment Act and the case of **Otieno v**

Kenya Petroleum Refineries Limited (Cause E078 of 2022) [2023] KEELRC 1264 (KLR) (18 May 2023) (Judgment) in support. In light of the foregoing, the Respondent submits that the Claimant's conduct fell below the required standard of an Accounting Officer and urged the Court to find that the Respondent had a valid reason for terminating his employment. The Respondent therefore, submits that the Claimant had valid reasons for the dismissal of Claimant and that the procedure of arriving at the decision to terminate his employment was fair and lawful. The Respondent cited the case of **Postal Corporation of Kenya v Andrew Tanui {2019} eKLR** in which the Court of Appeal per 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."

17. The Respondent submitted that the Claimant was granted an opportunity to respond to the allegations contained in the show cause letter and that the Claimant duly responded to the said allegations vide his response on 23rd August 2023 wherein he did not dispute the period given to him to respond to the Show Cause letter. He also did not request for more time for him to respond. Upon being informed that his Response to the Show Cause letter was unsatisfactory, the Claimant was duly invited to a disciplinary hearing and he was informed that he could bring legal representation with him to the hearing should he wish to but chose not to do so. It was submitted that it is thus, totally untenable for the Claimant to lament on the conduct of the hearing whereas he was granted a fair trial and an opportunity to be heard in accordance with Article 47 of the Constitution of Kenya.

18. The Respondent submits that after deliberating on his case after the hearing, the allegations of gross misconduct as levelled against the Claimant was proved to the satisfaction of the disciplinary board and the Respondent was duly notified of the decision to have him dismissed from the County Public Service and the right to appeal, hence the Respondent cannot be faulted. The Respondent cited the decision of the Court of Appeal in **Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] eKLR** where the Court of Appeal held that there was substantial compliance with section 41 of the employment Act. The Respondent urged the dismissal of the claim with costs.

Disposition

19. The Claimant was terminated for allegedly conferring a benefit to a contractor for a project he supervised as the accounting officer of the Respondent. The works were commenced after a tender and the Respondent asserts the Claimant allowed payment to be made when the work was not complete. The Claimant was placed on notice of the intention by the Respondent. He was given 7 days to

respond and he did respond. However, the Claimant challenges the Respondent for not adhering to the law in his dismissal. The Respondent was required under the HR policies in place to give the Claimant 21 days to respond and the Claimant was given only 7.

20. Whereas the Claimant responded and was heard, it is the determination of this Court that the dismissal that flowed from the truncated process of show cause was unfair to the Claimant to the extent the result can be impugned as the Claimant was not allowed sufficient time to mount a defence. It defeats the entire logic of the process to subject an employee to a shortened period of response to show cause and when the employee fails to exonerate themselves the employee is dismissed. The process having been flawed the Claimant is entitled to recompense.

21. The partial completion certificate issued was not the basis of payment as the instructions to pay were issued after the Claimant was suspended. In my considered view the Claimant was not responsible for the payments made. He had been effectively stripped of all authority to make

payment at the time the payments were made. The Claimant did not make out a case for the payment of aggravated damages in line with the Orengo case cited above or for any compensation beyond the 12 months under the Employment Act. He is still young and can surmount this unfair dismissal and obtain employ to mitigate the losses. The Claimant is therefore entitled to the following reliefs.

- a. One month's salary as notice Kshs. 219,640/-.
- b. 12 month's salary as compensation in terms of section 49(1) - Kshs. 2,635,680/-.
- 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 11th day of December

2025

**Nzioki wa Makau, MCI Arb.
JUDGE**