

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**CAUSE NO. E034 OF 2025**

**CYRILIS SANYA MUSUMBA ..... CLAIMANT**

**VERSUS**

**KENYA MARITIME AUTHORITY ..... RESPONDENT**

**JUDGMENT**

The claimant is a male adult. The respondent is established under the Kenya Maritime Authority Act.

The respondent employed the claimant in February 2007 as a data input clerk, grade KMA 6, and the claimant rose to the position of senior licensing and seaborne trade officer, grade KMA. His claim was that he worked until 20 December 2024, when his employment was terminated without cause.

The claim is that the respondent knew well that the claimant was suffering from a mental health illness first diagnosed in 1992. The claimant was undergoing treatment at various medical facilities. The respondent knew of the illness because the claimant required constant clinic attendances, and the treatment expenses were covered by the respondent's corporate medical scheme.

As a result of the medical condition, the claimant requested early retirement on medical grounds through a letter dated 20 September 2024. This was informed under clause 12.9 of the respondent's Human Resources Policies and Procedures Manual. Expecting a positive response, the claimant prepared the handing-over report on 5 November 2024.

On 15 October 2024, while away on annual leave, the claimant received a letter dated 26 September 2024, requesting that he show cause why disciplinary action should not be taken against him for his alleged gross misconduct. He was required to reply within 21 days. The allegations made were unsubstantiated and lacked detail. The respondent alleged that he held a forged certificate without giving details.

The allegations were without foundation because the claimant lost his original academic certificates on 26 January 2023. He reported to the police, obtained an OB No. 57/26/11/23, obtained an affidavit, and produced confirmation of loss during his employment in 2007. He worked for the respondent for 17 years, relying on the same records.

Due to the health challenges, the claimant intended to reply to the notice to show cause upon resuming duty on 1 November 2024, which was within the 21 days given by the respondent. However, upon returning from his annual leave, he found that he had been cut off from official communication and had no access to emails or vital sources of information.

The claim is that, without notice or hearing, the respondent terminated employment by summary dismissal in the letter dated 1 November 2024. The claimant had just returned from annual leave. The termination notice was served by email on 20 December 2024 to the personal email address because the official email address had been deactivated.

The claim is that there was a violation of section 41 of the Employment Act (the Act) and of articles 25 and 47 of the Constitution. There was no due process or fair administrative action.

Despite completing the clearance process and indicating that he had no liabilities with the respondent, his terminal dues have to be paid. The respondent has refused to complete the paperwork required for payment of pension benefits earned for 17 years, as held in the Zamara Fanaka Retirement Funds (Pension Section) by M/s Zamara Actuaries, Administrators and Consultants Ltd. Zamara states that the claimant's total pension fund credit as at 31 December 2024 amounted to Ksh. 7,274,645.64.

The certificate of service has not been issued as required under section 51 of the Act. The claimant is seeking the following:

- a) An order and declaration that employment was terminated unlawfully and unfairly.
- b) Notice pay Ksh. 226,500.
- c) 12 months' compensation for unfair termination of employment, Ksh. 2,718,000.
- d) Leave pay for 12 days Ksh. 104,544.
- e) An order directing the claimant to process paperwork to allow access to pension benefits held by Zamara Fanaka Retirement Fund, amounting to Ksh. 7,274,645.64
- f) A certificate of service.
- g) Costs of the suit.

The claimant testified that he had a medical condition and was undergoing treatment while working for the respondent. He obtained a Certificate of Illness but did not file it. The representative was aware of his medical status because he was covered under the corporate medical scheme.

The claimant testified that due to his health condition, on 30 September 2024, he applied for early retirement on medical grounds, and in preparation, he took annual leave. However, upon resuming duty on 1 November 2024, he found that his workplace access to the systems had been deactivated.

On 15 October 2024, he was served a notice to show cause while on annual leave. Due to illness, he could not reply.

Upon resuming duty on 1 November 2024, the claimant could not reply to the notice to show cause, and the respondent kept him in limbo. He later learned that he had been dismissed through a letter dated 20 December 2025. From 1 November 2024, he had remained at work trying to resolve access to the system, not aware that his employment had been terminated. There was no due process, and despite clearance from all departments, no payment of terminal dues was made. The respondent withheld the benefits on the basis that he had forged certificates used to obtain employment, which was not correct. The respondent alleged that his original KCSE secondary school certificate indicated he had scored a D-, whereas the one he submitted while seeking employment showed a different score. The respondent further alleged that they sought clarification from the National Examination Council and confirmed that the claimant was using a forged certificate, which was not true.

The claimant testified that he had lost his documents, reported the matter to the police, and obtained an affidavit. He had used these documents to work for the respondent for 17 years.

Upon cross-examination, the claimant admitted that he had not filed his Certificate of illness. He applied for early retirement on medical grounds.

He also admitted receiving the notice to show cause, which gave him 21 days to reply on 15 October 2024. He did not respond.

He did not report the loss of his KCSE certificate to NEC.

In reply, the respondent filed a response and counterclaim.

The response is that the claimant is guilty of material non-disclosure, having unlawfully obtained employment with the respondent by submitting falsified and forged academic documents. He is a male of sound mind, unlike what is alleged, and there is no evidence of any illness.

The claim was issued with a notice to show cause on 26 September 2024 to answer to charges of contravention of section 11.6.1 111 (xxii) of the HR policy by committing fraud and forgery, which is categorized as gross misconduct. In an afterthought and in subterfuge, the claimant, through a letter dated 30 September 2024, feigned an early retirement to defeat the disciplinary process initiated by the respondent.

The claimant did not submit any medical records to substantiate his allegations that he was treated unfairly. He refused to reply to the notice to show cause, which justified summary dismissal. Considering the severity of the case of possession of forged documents with altered grades in 5 subjects and the mean grade under KNECS attained in 1995 from Sacred Heart Secondary School index No. 106107/081, the director general recommended that the claimant be dismissed from his employment. Under the Public Officers Ethics Act, Leadership and Integrity Act, Penal Code, Public Service Act, and the HR policy, the claimant is not entitled to any terminal dues or certificate of service.

The claim of unlawful and unfair termination of employment is not justified. The claims are without merit and should be dismissed.

### **Counterclaim**

In the counterclaim, the claim is that the claimant obtained employment from the respondent through submitting falsified and forged academic documents. He never disclosed to the respondent that he had been forced to possess KNECS and was thus guilty of material non-disclosure.

Due to the claimant's deceit, he acted contrary to the law. The respondent offered him employment in good faith and allowed him to work for 17 years. The claimant continued to unlawfully draw salaries, allowances, and benefits.

The counterclaim is seeking the following:

- a) A declaration that employment was terminated lawfully.

- b) A declaration that the claim is not entitled to terminal dues in benefits, pension, and certificate of service.
- c) A reimbursement of Ksh. 36,067,479.55 being amounts unlawfully paid in salaries, allowances, and benefits as of the date of termination of employment.
- d) Costs of the suit.

In evidence, the respondent called Martina Yattani, the acting director of human resources and administration, who testified that she was appointed to the acting position on 23 April 2025. The respondent was not aware of the claimant's medical condition; as such, it remains a personal and confidential matter.

Yattani testified that the claimant was an employee of the respondent, serving as a senior licensing and seaborne trade officer, KMA 6, from 16 February 2007 to 1 November 2024, when his employment was terminated by summary dismissal.

While seeking employment, the claimant submitted documents dated 4 October 2006. In the cover letter, he applied for the position of data input clerk, KMA 6. He declared that he had attained the following academic qualifications:

- a) Certificate in Computer Maintenance and Network Technology in April 2001 from Mombasa Polytechnic.
- b) Certificate in Computer Operations and Business Applications, April 1997 from Mombasa Polytechnic.
- c) Kenya Certificate of Secondary Education, mean grade C+ attained from the Sacred Heart High School, November/December 1995 examination.
- d) Kenya Certificate of Primary Education, St. Augustine 1990.

The respondent invited the claimant to an interview on 20 January 2007 and, by letter of appointment dated 2 March 2009, offered him employment. While carrying out the authentication of academic and professional certificates for its employees, following the PSC Circular Ref. PSC/ADM/13 (45) dated 19 October 2023, the respondent requested the Kenya National Examination Council (KNEC), through a letter dated 15 September 2023, to verify and authenticate the KCSE certificates for all employees.

The KNEC responded on 6 January 2024, stating that the claimant sat for the KCSE examination in 1995. It was observed that grades in 5 subjects had been altered as follows:

- a) English (code 101) from D (plain) to C+ (plus).

- b) Kiswahili (code 102) from D (plain) to B- (minus).
- c) Mathematics (code 121) from E (plain) to C- (minus).
- d) Biology (code 231) from D- (minus) to B+ (plus).
- e) Chemistry (code 233) from D - (minus) to C (plain).

The claimant's mean grade had been altered from D- (minus) to C+ (plus).

In physics, code 232, History and government, code 311 Accounting, code 561. These were subjects that were neither registered for nor sat for, but were added to the purported copy of the certificate. Whereas the Christian Religious Education, code 313; agriculture, code 443; and commerce, code 562, were subjects registered and sat for but omitted from the purported KCSE certificate.

The KNEC further responded with additional details, verification, and an authentication report for all respondent employees in a letter dated 6 February 2024. These letters were received on 26 September 2024.

The respondent issued the claimant with a notice to show cause, detailing the charges made against him. The verification and authentication of the certificates relied upon were based on what the claimant submitted with his employment application. Upon notice, he did not adduce sufficient proof to challenge the show-cause notice.

Yattani testified that the notice dated 26 September 2024 relied on the provisions of section 11.6.1 III (xxii) of the HR policy, where he had committed fraud and forgery, which is classified as gross misconduct.

The human resource management advisory committee met on 29 October 2024 and noted that the claimant had requested early retirement in a letter dated 30 September 2024. Considering the severity of the case, and given the forged documents that altered grades in 5 subjects and resulted in a grade below the KCSE certificate, it was recommended that a summary dismissal be imposed.

The disciplinary process commenced when the claimant was issued with notice to show cause on 26 September 2024, together with the charges made against him. He did not respond to the show-cause notice. He was afforded a hearing but declined to respond and instead sought early retirement to frustrate the disciplinary process. By his conduct, the claimant had committed gross misconduct, and the termination of employment was justified. Notice issued through email on 20 December 2024.

The termination of employment resulted from the submission of forged academic certificates. This was in contravention of the HR policy, the Employment Act, the Public Ethics Act, the Public Service Commission Act, the Leadership and Integrity Act and the need for integrity in the public service. Forged academic credentials not only violate the HR policy but also constitute a criminal offence.

The claimant precluded dismissal by resignation.

The Ethics and Anti-Corruption Commission, through a circular dated 11 March 2024, advised all accounting officers not to process benefits, including pensions or unpaid allowances and accrued leave, to persons found to have used fraudulent academic qualifications to gain employment in the public service. The salaries, allowances, and benefits earned by the public officers who secured employment using forged academic and professional certificates are recoverable in full.

Yattani testified that the claimant's employment contract was null and void ab initio, and the respondent is entitled to restitution of all monies paid to the claimant under the fraudulent access to employment.

### **Determination**

The court has analysed the parties' pleadings, evidence, and written submissions. The issues which emerge for determination are:

Whether the termination of the claimant's employment was wrongful, unlawful, and unfair.

Whether the remedies sought should issue, including payment of pension dues held by Zamara Fanaka Retirement Fund.

Whether the counterclaim has merit.

Who should pay the costs?

The claimant is a male adult, while the respondent is a body registered under the Kenya Maritime Authority Act. It is regulated in law as a government agency. Its employees are public officers.

It is not in dispute that the respondent issued the claim with a notice to show cause dated 26 September 2024. He did not respond.

Through a notice dated 30 September 2024, the claimant resigned from his employment on medical grounds. He gave 30 days' notice.

On 7 October 2024, the claimant applied for 18 days' leave to resume on 1 November 2024.

The claimant testified that he was unable to respond to the notice to show cause dated 26 September 2024 because of medical reasons; he felt exhausted and had an ailing wife who required medical surgery. Since he was on leave, he hoped to reply upon his return.

It is a common cause that, through a circular dated 19 October 2023, the PSC directed all government agencies to verify and authenticate the validity of its employees' KCSE certificates. Further, the EACC, through a circular dated 11 March 2024, directed all accounting officers not to process salaries, benefits, and other emoluments for persons who had secured employment in the public service on the basis of fraudulent academic qualifications.

The PSC, as an independent constitutional commission, has a mandate under Article 234, read with Article 260 of the Constitution, to regulate the public service, regulate the human resources of all state corporations and agencies, as held in **Manyara Muchui Anthony v Communications Authority of Kenya & 6 others [2022] eKLR**.

In **Consumer Federation of Kenya (COFEK) v National Social Security Fund Board of Trustees & 2 others [2022] eKLR**, the court emphasised that the body given a constitutional mandate to organise and regulate the public service is the PSC. This includes persons employed in state corporations such as the respondent herein. See **Republic v Kenya Ports Authority & 3 others, ex parte Commission for Human Rights Justice, Judicial Review Application No. E001 of 2022 (Mombasa)** and **Enos Namasaka & 9 others v Kenya Medical Supplies Authority & others ELRC Petition No. E149 of 2023**.

Accordingly, the respondent was bound by the two cited circulars from the PSC and EACC, dated 19 October 2023 and 11 March 2024, respectively.

On the show cause dated 26 September 2024, which the claimant admitted receipt of, he made no response. His defence was that he had 21 days to respond, that he resigned on 30 September 2024, and that he then took annual leave from 7 October to 1 November 2024.

In the notice to show cause, the claimant was accused of submitting forged KCSE certificates for the year 1995. He had used forged certificates to fraudulently secure employment with the

respondent, which constitutes gross misconduct under the HR policy and constitutes a criminal offence.

Upon the show cause notice, the claimant had a duty to respond. An employee who is served with such notice cannot circumvent it through resignation, as held in **Chege v Timsales Limited [2025] KECA 1660 (KLR)**, that an employee cannot escape the disciplinary process by tendering a resignation or a retirement notice.

In **Chikutwa v Ineet Millers [2025] KEELRC 121 (KLR)**, the court held that to allow the employee to circumvent the disciplinary process through a resignation would be to sanitise gross misconduct.

In this case, the refusal to respond to the notice to show cause and the option to resign frustrated the claimant's employment, and he cannot turn around to assert any rights therefrom.

As a public body subject to the PSC and EACC circulars, we did not challenge the charge of using forged certificates to obtain employment through fraud. Even in these proceedings, the claimant did not make any effort to substantiate his case in this regard. He maintained that his documents had been lost and reported the matter to the police. However, when asked about the KNEC report on his certificates submitted on 4 October 2006, he became evasive.

The basis of the employment relationship was dismantled. The foundation was a fraud. Use of forged certificates. The returns from KNEC have not been challenged in any material way.

The employment relationship was thus void from the start. The claimant cannot benefit from employment obtained fraudulently. It is invalid. It carries no benefits.

As a public entity, the respondent has a duty under Article 226 of the Constitution to recover all monies paid to the claimant through fraudulent means, as held in **Republic v County Secretary, the County Government of Mombasa; Epco Builders Limited (Exparte) (Judicial Review Application E049 of 2021) [2022] KEHC 11081 (KLR)**.

In this regard, the counterclaim for recovery of all funds paid to the claimant is justified under the Constitution. He cannot claim pensions obtained on the basis of an employment relationship secured through fraud.

The sum of Ksh. 36,067,479.55 counterclaimed is due to the respondent agency from the claimant.

On costs, the claimant is without merit. The counterclaim has a good foundation, and the claimant should therefore pay costs to the respondent.

**Accordingly, the claim is hereby dismissed with costs to the respondent. The counterclaim has merit, and the sum of Ksh. 36,067,479.55 is recoverable from the claimant to the respondent together with costs.**

Delivered in open court at Mombasa, this 19th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and .....