



Mungai v Kenya Forestry Research Institute & another (Cause E683 of 2020) [2026] KEELRC 384 (KLR) (16 February 2026) (Judgment)

Neutral citation: [2026] KEELRC 384 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E683 OF 2020
MN NDUMA, J
FEBRUARY 16, 2026**

BETWEEN

CHARLES NGUGI MUNGAI CLAIMANT

AND

KENYA FORESTRY RESEARCH INSTITUTE 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. The Claimant was employed by the 1st Respondent on 10/6/1996 as a Chief Accountant on a monthly gross salary which was Kshs. 71,516.00 as at the time of separation.
2. On 6th November 2003 the Claimant was suspended on allegations of loss of revenue. The suspension was to last until criminal case no. 2729 of 2023 in which the Claimant was charged before the Magistrates Court was finalized.
3. On 19/2/2013, the Claimant was convicted by the Chief Magistrate's Court and appealed the decision at the High Court in Criminal Appeal No. 77 of 2013 where he was acquitted of all charges on 31/10/2019.
4. That upon acquittal, the Claimant delivered a copy of the High Court judgment to the 1st Respondent's Personnel Department and requested to be reinstated and be paid his arrear salary and pension. The respondent ignored the request and the claimant vide his advocate wrote a demand letter dated 16/9/2020 but same was not acted upon.
5. The Claimant testified to the aforesaid facts under oath as CW1 and adopted a witness statement dated 27/10/2020 as his evidence in chief. The Claimant produced exhibits including letter of appointment as Chief Accountant dated 10/6/1996.
6. The letter of suspension is dated 6/11/2023. The suspension was without a salary and other benefits.



7. The judgment by the High Court in Criminal Appeal No. 74, 75 and 77 of 2013 in which the Claimant and his two colleagues had appealed their conviction and sentence by the Principal Magistrate Hon. R. A. Mutoka on 19/2/2023 in Criminal Case No. 2729 of 2003.
8. The Claimant and the co-accused had been charged with the offence of jointly stealing Kshs. 2,003,007.50; Kshs. 2,484,956.20; Kshs. 2,945,971.85 and Kshs. 523,938.30 respectively being the property of the Government of Kenya which came into their possession by virtue of their employment.
9. In acquitting the Claimant, the High Court per Hon. Justice L. Kimaru (as he then was) held –

“In the present case the prosecution failed to conclusively establish that the 1st Appellant exclusively was authorized to receive any funds collected as revenue from the cashiers. He was not the custodian of the receipt books as PW13 stated that he was. The prosecution did not prove to the required standard of proof that the 1st Appellant exclusively was authorized to receive any funds. The 1st Appellant in his defence denied receiving any revenue. He stated, that cash was collected and banked by the cashiers. The conviction on the four counts must therefore fail.” The Claimant was accordingly acquitted of all charges.

The Claimant prays for the following reliefs: -

- i. Re-statement with full payment of salary arrears and in the alternative;
- ii. Full payment of salary arrears and pension
- iii. Gross salary of Kshs. 71,510.00 per month from the date of suspension to the date of reinstatement or retirement.
- iv. Accrued pension up to retirement age of 60 years.
- v. Costs of the suit
- vi. Interest.

Defence

10. The Respondent filed a reply to memorandum of claim dated 4/12/2020 in which the Respondent admits the particulars of employment of the Claimant set out in paragraphs 1, 2 and 3 of the memorandum of claim.
11. The Respondent admitted paragraphs 6 and 7 of the memorandum of claim that the Claimant was suspended and charged in court for loss of funds without payment of any salary during the period of suspension.
12. The Respondent also admitted the contents at paragraph 8 of the memorandum of claim that the Claimant was convicted by the Magistrate Court on the charges but was acquitted on appeal by the High Court on all charges by a judgment dated 31/10/2019.
13. RW1 Philip Gichana, Company Secretary and Principal Legal Officer of the 1st Respondent testified under oath and adopted a witness statement dated 15/2/2022 as his evidence in chief.
14. RW1 stated that he was not an employee of the Respondent when the Claimant was suspended. He confirmed that the suspension was on 6/1/2003 until the Criminal case is finalized. RW1 confirmed that the Claimant was not paid any salary during the period of suspension and had not been paid the withheld salary.



Determination

15. The parties filed their written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The issues for determination are: -
 - i. Whether the Claimant is entitled to the reliefs sought having been kept on suspension without pay pending the hearing and determination of the criminal case against him.
16. It is not in dispute that the Claimant was suspended on 6/11/2003 upon being charged with the offences of theft by servant. It is not in dispute that the Claimant was acquitted of all charges on appeal by the High Court in a judgment delivered on 31/10/2019. It is also not in dispute that the Claimant wrote a demand letter to the 1st Respondent to be reinstated and be paid all arrears salary from date of suspension until date of reinstatement. The 1st Respondent ignored the letter of demand till the suit was filed.
17. The 1st Respondent did not subject the Claimant to any disciplinary hearing and the employment of the Claimant was not terminated by the Respondent. He remained under suspension until the date of his retirement which occurred on 28/4/2021.
18. In the case of Karuga versus Nairobi City Water and Sewerage Company Limited and another (Civil Appeal 193 of 2019) [2021] KECA 109 (KLR) (22 October 2021) (Judgment),
19. the Appellant had been suspended as a result of criminal charges for fraud levelled against him and acquitted after around 8 years. The Court of Appeal held:-

“34...we hold that the Appellant was entitled to his salary for the period of suspension after his acquittal.”
20. In the present case, the Respondent did not conduct any disciplinary hearing against the Claimant in the intervening period. Had the 1st Respondent done so and terminated the employment of the Claimant pending the hearing and determination of the criminal trial, that would have been a different matter.
21. In the case of Republic versus Secretary, Teachers Service Commission and Another Ex-parte Samuel Muthamu Lipeya, the court emphasized that disciplinary proceedings are independent of criminal proceedings and the determination in one way need not necessarily be the same in the other.”
22. In the present case, the Claimant has proved on a balance of probability that he is owed his entire salary from the date of suspension till the date of retirement which came after his acquittal by the High Court. This is based on the legitimate expectation given by the 1st Respondent that his suspension without pay was pegged on his acquittal of the criminal charges facing him and as and when acquitted he would be paid all his salary and he be reinstated to his job until retirement unless is found guilty of a disciplinary offence determined in a disciplinary process lawfully held by the employer.
23. Accordingly, the court finds that the Claimant having attained the retirement age after his acquittal of the criminal charges by the High Court, the Claimant is entitled and is awarded as against the Respondents: -
 - a. Full salary at the rate of Kshs. 71,510.00 per month from 6th November 2003 up to the date of retirement on 28th April 2021, the period which the Claimant stayed under suspension without any pay at the instance of the 1st Respondent.



- b. The Claimant is entitled and is awarded his full pension upon attaining the retirement age at 60 years on 28th April 2021. The 1st Respondent to cause the pension to be processed and paid forthwith.
- c. Interest on (a) and (b) above at court rates from date of the suit till payment in full
- d. Costs of the suit
- e. The Respondent to compute and file the award in (a) and (b) above within 60 days of this judgment and make the payments accordingly. The Claimant at liberty to file a counter computation within 30 days of service of the computation by the Respondent and or in case of default by the respondent.

DATED AT NAIROBI THIS 9TH DAY OF FEBRUARY 2026

MATHEWS NDUMA

JUDGE

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF FEBRUARY 2026

J. W. KELI

JUDGE

In the presence of:

Mr. Ongeru for Claimant

Mr. Mulili for Respondent

Mr. Kemboi – Court Assistant

