



**Mambo (Suing as the legal representative of the Estate Of the Lade Robert Mambo Ndiangui) v Kenyatta University (Cause 424 of 2017) [2026] KEELRC 586 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 586 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 424 OF 2017  
DKN MARETE, J  
FEBRUARY 25, 2026**

**BETWEEN**

**RAHAB MAMBO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LADE ROBERT MAMBO NDIANGUI) ..... CLAIMANT**

**AND**

**KENYATTA UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Statement of Claim dated 23rd February 2017. It does not disclose any issue in dispute on its face.
2. The Respondent in a Memorandum of Response dated 18th January, 2018 denies the claim and prays that it be dismissed with costs.
3. The matter was originated by the late Robert Mambo but upon his sad demise, his widow, Rahab Mambo was substituted with a view to pursuing the claim. An amended statement of claim amended on 10th March, 2024 was filed in place of the earlier claim in court.
4. The Claimant case is that the Respondent appointed the deceased as a Senior Administrative Assistant Grade E/F on a one-year renewable contract dated 14th and 21st July, 2014 respectively. The deceased served the Respondent diligently leading to his promotion as Transport Manager in acting capacity vide a letter dated 27th August, 2014. They were answerable to the Head of Department who would also assign their responsibilities.
5. The Claimant's further case is that upon assumption of the acting role, the deceased took charge of a department that was, at the time, grappling with significant operational challenges, particularly with a large number of grounded vehicles. However, within a period of seven months, they oversaw the repair and restoration of six buses, six small vehicles, and three tractors. As a result, the number of grounded



vehicles was reduced from fifteen to one thereby improving the Respondent's fleet capacity and overall institutional efficiency.

6. The Claimant other case is that on 20th December 2014, the deceased reported to his office as usual only to find that it had been broken into, by a Mr. Isaac Mwaniki, who was still within the premises. He then sought an explanation from the Mr. Mwaniki vide a letter dated 22nd December 2014 to no avail. No response was forthcoming. Thereon, the Respondent abruptly and without prior notice suspended the deceased from employment without pay vide a letter dated 30th March, 2015. At this point, the deceased had served for seven months in the acting position and had a further five months remaining before the expiry of his contract.
7. The Claimant avers that the deceased's suspension was based on the allegations that the deceased allegedly received Note No. 65992 of 17th December, 2014 together with the Stores Clerk items worth Kshs.7200.00, yet the same could not be accounted for either to the stores or work done on mini bus Reg No. KAW 900Z. Others are;
  - i. Note No. 4941 of 30th September, 2014 showing a radiator and brake unit worth Kshs.42,492 in the stores yet the items could not be accounted for either in the stores or on work done.
  - ii. Note No. 65857 of 17th February, 2015 and receipt No. 1942 both of Kshs.6,000 showing items bought and received at the stores to be used for panel beating but which could not be accounted for either in the stores or work done.
8. It is the Claimant's case that the Senior Mechanic's record of 15th January, 2015 confirmed that more than 24 vehicles had been attended to with a float of Kshs.40,000 during the deceased's tenure. The Claimant therefore contends that it is impossible that any report prepared by an independent and impartial person would find any malpractices or wrong doing therefore on the deceased's part in running the Transport Sector.
9. Following the suspension, the Claimant avers that the Respondent did not convene a disciplinary hearing or communicate any intended date for such a process. The deceased, on his own initiative wrote to the Respondent on 1st April 2015 seeking an opportunity to be heard in order to respond to the allegations levelled against him. However, this request elicited no response. The deceased wrote another letter dated 18th June, 2015 furthering his request but yet again there was no response from the Respondent. The Claimant avers that during this period, the Respondent advertised the position held by the deceased in the Daily Nation Newspaper on 17th April, 2015, thereby portraying the position as vacant. This affirmed that the Respondent had already decided to remove him from office had already been made.
10. The Claimant avers that on 1st December, 2015, the Respondent invited the deceased to appear before its Senior Board of Discipline Committee for a meeting scheduled on 7th December, 2015. However, the meeting did not take place. The Respondent vide a letter dated 12th February, 2016, scheduled another hearing on 18th February, 2016. It is their case that the deceased appeared before the Committee on the appointed date and was informed that there were nine counts of misconduct against him. However, only three allegations were read out and the other remaining six were neither disclosed nor particularized. The Claimant thus contends that the deceased was denied knowledge of the full case against him and therefore was unable to prepare or present a comprehensive defense.
11. The Claimant's other case is that the Respondent vide a letter dated 24th February, 2016, communicated its decision to summarily dismiss the deceased's employment and further indicated that their contract, which allegedly had expired during the period of suspension, would not be renewed. The disciplinary process was merely a formality and undertaken after the Respondent had already



resolved to terminate the deceased's employment. This was further a breach of the requirements of Section 41 of the *Employment Act*, 2007 as the deceased was neither afforded a fair hearing nor furnished with adequate particulars of the allegations against him in advance.

12. The Claimant's further case is that the deceased, aggrieved by the decision, lodged an appeal vide a letter dated 2nd March, 2016. This was also not answered. Consequently, the deceased, through his advocates, issued a demand letter dated 25th May, 2016 seeking payment of sums allegedly due for unfair termination. Thereafter, by a letter dated 1st September, 2016, the Respondent invited the deceased to an appeal hearing, which the Claimant characterizes as an afterthought aimed at regularizing an otherwise flawed process. The appeal was ultimately dismissed, and this outcome was communicated by a letter dated 28th September 2016.
13. In the same communication, the Respondent indicated that it would pay the deceased a sum of Kshs.319,152, being remuneration for the period remaining on the contract from the date of suspension which payment was described as having been made on humanitarian grounds. The Claimant disputes this characterization and contends that the payment was an attempt to limit the Respondent's liability while withholding the deceased's full contractual and statutory entitlements.
14. The Claimant further asserts that by continuing to subject the deceased to disciplinary and appellate processes after the alleged expiry of his contract in July 2015, the Respondent impliedly renewed the contract and acknowledged the subsistence of the employment relationship. On this basis, the Claimant maintains that the termination was unlawful, unfair, and procedurally flawed and that the Respondent is liable to pay the outstanding dues and benefits claimed, arising from the unlawful termination of the deceased's employment.
15. She Claims thus;
  - i. Three months' Salary in lieu of Notice at per month = Kshs.216,102.00
  - ii. Gratuity at 31% per annum = Kshs.20,714.20/-
  - iii. Unpaid salary during suspension = Kshs.792,374.00/-
  - iv. Salary for the remaining period of the Contract = Kshs.360,170.00/-
  - v. Unpaid leave days Kshs.139,420.65/-
  - vi. Unpaid acting allowance before suspension Kshs.30,069/-
  - vii. Unpaid acting allowance after suspension Kshs.85,195/-
  - viii. Unpaid acting allowance for the remaining period of the contract = Kshs.25,057.50/-
  - ix. Unpaid leave travelling allowance = Kshs.14,506/-
16. She prays as follows:
  - a. A declaration that the deceased's termination from employment was unfair and unlawful.
  - b. The sum of Kshs.1,364,456.85 being the balance of the deceased as at the time of termination, as particularized in paragraph 28 above.
  - c. Damages for unlawful termination of employment.
  - d. Costs of this suit.
  - e. Interest on (a), (b) and (c) above.



- f. Any other relief as the court deems fit.
17. The Respondent's case is that by a letter of appointment dated 14th July, 2014, the deceased was appointed to the position of Senior Administrative Assistant, Grade E/F on a one-year renewable contract effective from 7th July, 2014, at a basic salary of KShs.33,410 plus gratuity at the rate of 31% of his basic salary upon the successful completion of the contract.
  18. The Respondent further avers that although the deceased was subsequently appointed to act as Transport Manager with effect from 27th August, 2014 his terms and conditions of service remained as set out in the appointment letter dated 14th July, 2014 and were not altered by the acting appointment.
  19. It is the Respondent's further case that approximately six months into his employment the deceased received a warning letter for gross insubordination and neglect of duty arising from his failure to procure seats in good time for the 37th Graduation rehearsal scheduled for 18th December, 2014. Again, on 17th March, 2015, its Directorate of Security Services received information indicating that certain members of staff within the transport department were defrauding it through fictitious purchases of vehicle spare parts. Investigations were thereafter conducted within the transport department, culminating in a report dated 20th March, 2015 which focused primarily on the deceased and one Lambert Onyango, a Stores Clerk.
  20. It is the Respondent's case that the report observed, inter alia, that the deceased had colluded with the Stores Clerk to siphon float money; that Stores Receiving Notes raised using the manager's float bore no names of the mechanics who allegedly purchased the items and that no job cards were raised to evidence repairs undertaken and that the Senior Mechanic had no job cards for vehicles in respect of which Stores Receiving Notes had been raised, contrary to the Respondent's policy. Following the said investigation, the Respondent avers that the deceased was placed on suspension by a letter dated 30th March, 2015 pending further investigations and/or his appearance before the Senior Board of Discipline. The deceased subsequently appeared before the Senior Board of Discipline on 18th February, 2016 where he was afforded an opportunity to defend himself. Upon consideration of his representations, the Board's decision was communicated to him by a letter dated 24th February, 2016.
  21. The Respondent avers that the deceased was summarily dismissed from employment after being found to have contravened section 44(4)(g) of the Employment Act 2007 and section 6.3(iii) of the terms of service. He was further informed that his contract of employment, which had expired while he was on suspension, would not be renewed. The Respondent maintains that the deceased was duly informed of his right of appeal, which he was required to exercise within fourteen days, and that he lodged an appeal on 8th March, 2016 by a letter dated 2nd March, 2016.
  22. The Respondent further avers that by a letter dated 1st September, 2016, the deceased was invited to appear before the Staff Appeals Board of Discipline on 19th September, 2016. The deceased presented his grounds of appeal, which were duly considered, and the Appeals Board upheld the decision of the Senior Board of Discipline. Further and notwithstanding the deceased's failure to successfully complete his contract, his salary for the remainder of the contract period was paid together with the gratuity to which he was entitled. The Respondent maintains that no further sums are owing to the deceased and thus denies that the Claimant is entitled to the sums particularized under paragraphs 28 and 29 of the Claim and puts the Claimant to strict proof thereof.
  23. The matter came to court variously until the 24<sup>th</sup> February, 2025 when it was heard inter partes
  24. At the hearing, the Claimant testified in reiteration of their case. This was by adopting their witness statement dated 10th March, 2024 as her evidence in chief and produced the bundle of documents



dated 23rd February, 2017, Further List of Documents dated 29th January, 2019 and Supplementary List of Documents dated 10th March, 2024 as their exhibits.

25. The Respondent's witness adopted his witness statement dated 30th September, 2024 as his evidence in chief and produced the Respondent's bundle of documents dated 18th January, 2018 and supplementary bundle dated 18th November 2024 as the Respondent's exhibits.
26. The issues for determination therefore are;
  1. Whether the employment of the claimant by the respondent was wrongful, unfair and unlawful.
  2. Whether the Claimant is entitled to the relief sort.
  3. Who bears the cost of this cause.
27. The 1st issue for determination is whether the employment of the claimant by the respondent was wrongful, unfair and unlawful. On this the claimant submits in reliance to section 43(1) of the *Employment Act*, 2007 which provides that the employer bears the burden of proving the reason or reasons for termination and failure to do so renders the termination unfair within the meaning of section 45 of the Act. Besides, section 45(2) of the Act requires an employer to demonstrate that the reason for termination was valid and fair, related to the employee's conduct, capacity, compatibility or operational requirements and that the termination was carried out in accordance with fair procedure.
28. In further buttressing their case the Claimant sought to rely on the celebrated authority of WALTER OGAL ANURO V TEACHERS SERVICE COMMISSION [2013] KEELRC 386 (KLR), where the Court held that for a termination to pass the fairness test, there must be both substantive justification and procedural fairness. It was submitted that the Respondent's process failed on both limbs. It is their case and submission that the disciplinary process leading to the deceased's termination was procedurally flawed, devoid of fairness and in total contravention of sections 43 and 45 of the *Employment Act*, 2007.
29. The Claimant submitted that it was not disputed that the deceased was employed by the Respondent as a Senior Administrative Assistant on a one-year renewable contract pursuant to a letter of appointment dated 14th July, 2014 and terms of service dated 21st July, 2014. Under the said contract, the deceased earned a monthly basic salary of Kshs.33,410, house allowance of Kshs.30,624, and commuting allowance of Kshs.8,000, bringing his total monthly pay to Kshs.72,034. It was further common ground that with effect from 27th August, 2014 the deceased was appointed to act as Transport Manager.
30. The Claimant further submitted that the deceased was terminated vide a dismissal letter dated 24th February, 2016, a decision that was later upheld by the Respondent's Appeal Board through a letter dated 28th September, 2016. Prior to the termination, the deceased had been issued with a suspension letter dated 30th March, 2015. The Claimant emphasized that from the date of suspension to the date of termination, the Respondent took approximately one year and eight months to conclude the disciplinary process. This period was inordinately long, tedious and unfair. On this they placed reliance on the decision in Musyimi v Daystar University [2023] KEELRC 1898 (KLR), where the Court observed that disciplinary proceedings, being stressful and disruptive, ought to be concluded expeditiously. Similar reliance was placed on Rebecca Ann Maina, Monica Nyambura Wainaina & Joshua Patrick Macharia v Jomo Kenyatta University of Agriculture and Technology [2015] eKLR, where prolonged disciplinary proceedings were held to amount to an unfair labour practice contrary to Article 41(1) of *the Constitution*.



31. The Claimant other submission is that the suspension letter dated 30th March, 2015 unlawfully stopped the deceased's salary and medical cover, including that of his dependants. The deceased's salary from 31st March, 2015 to July, 2015 when the contract is alleged to have ended, was only paid on 26th October, 2016 as his terminal dues after the appeal board issued a letter upholding the termination of the deceased.
32. The Claimant submitted that upon suspension, the deceased promptly responded through a letter dated 1st April, 2014 and later wrote a follow-up letter dated 18th June 2015 due to the Respondent's silence. Despite the disciplinary process being incomplete, the Respondent, just one month after the suspension, advertised the position previously held by the deceased, inviting applications by 5th May, 2015. It was submitted that this action demonstrated that the Respondent had already predetermined the termination. The Claimant rejected the Respondent's assertion that the advertised position was different, noting that no evidence was produced to support that claim.
33. The Claimant further submitted that the invitation to a disciplinary hearing dated 1st December, 2015 scheduled for 7th December, 2015 failed to inform the deceased of his right to be accompanied by a colleague or representative, contrary to section 41 of the *Employment Act*. Reliance was placed on *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR, where the Court of Appeal set out the mandatory procedural elements required for a fair disciplinary process. It was submitted that the Respondent failed to meet these requirements.
34. It was also submitted that the disciplinary hearing scheduled for 7th December, 2015 never took place and that the letter deferring the hearing was dated 8th December, 2015 a day after the scheduled date, without indicating a new hearing date. This, according to the Claimant, further demonstrated procedural unfairness. Although a subsequent hearing was scheduled for 18th February, 2016 the invitation letter dated 12th February, 2016 similarly failed to notify the deceased of his right to representation.
35. The Claimant challenged the reliability of the minutes of the disciplinary and appeal hearings produced by the Respondent, noting that they were not signed by the deceased. Reliance was placed on *Nyaga v Kiewa Group Limited* [2022] KEELRC 4098 (KLR), where unsigned minutes were found to be unreliable. It was submitted that the failure to have the minutes executed by the parties rendered them suspect. Their case is that the Respondent took six months to invite the deceased for an appeal hearing following his appeal dated 2<sup>nd</sup> March 2016, an unexplained delay that further illustrated the unfairness of the process. This agrees with the findings in the authority of *Ondieki v Vice Chancellor, Maasai Mara University & 2 others; Chairman Audit Committee Maasai Mara University (Interested Party)* [2024] KEELRC 254 (KLR) where prolonged disciplinary proceedings were held to violate sections 45 of the *Employment Act* and Articles 41 and 47 of *the Constitution*.
36. The Respondent submitted that the deceased was lawfully suspended pending investigations through a letter dated 30th March, 2015. The suspension letter informed the deceased of serious allegations of fraud against the University, including fictitious purchase of motor vehicle spare parts and fictitious payment for vehicle services as particularized in several Stores Received Notes and receipts, whose items could not be accounted for.
37. The Respondent submitted that the allegations constituted gross misconduct. Reliance was placed on Article 6.3 of the deceased's terms of service which empowered the University Council to remove a staff member from office for, inter alia, gross inefficiency, failure to perform duties, or failure to comply with the terms of appointment. Further reliance was placed on section 44(4)(c) of the *Employment Act*, which provides for summary dismissal where an employee willfully neglects to perform work or carelessly and improperly performs duties under the contract.



38. It was submitted that the deceased responded to the suspension through letters dated 1st April, 2015 and 18th June, 2015. Thereafter, he was invited to disciplinary hearings vide letters dated 1st December, 2015 and 12th February, 2016, and was informed of the charges against him and afforded an opportunity to submit a written defence. The disciplinary hearing was held on 18th February, 2016 and the outcome was communicated through a dismissal letter dated 24th February, 2016 summarily dismissing the deceased pursuant to section 44(4)(c) of the *Employment Act*, 2007. In the dismissal letter, the Respondent also noted that the deceased's fixed-term contract had expired while he was on suspension and that it would not be renewed.
39. The Respondent further submitted that the disciplinary process was conducted by a duly constituted Senior Board of Discipline which included the Chairman of the Kenyatta University Staff Union, of which the deceased was a member.
40. It is their case and submission that dismissal from employment is a two-tier process, requiring, first, valid and justifiable reasons, and second, adherence to fair procedure. Section 43(2) of the *Employment Act*, 2007 allows the employer to rely on reasons which it genuinely believed to exist at the time of termination and that the standard of proof is lower than that required in criminal or civil proceedings. The Respondent argued that courts should be slow to substitute their views for those of the employer, and that the applicable test is as follows
- ...would a reasonable employer confronted with the issue an employee is implicated in, consider termination or dismissal as the most appropriate sanction. If the answer is in the affirmative, then dismissal ought to be upheld; as was held in *Samson Thuku Mutiso v Diamond Trust Bank Kenya Limited* [2015] eKLR and *Andrew Wafula Amutalla v Kenyatta University*[2019] eKLR.
41. On procedure, the Respondent sought to rely on section 41 of the *Employment Act* and submitted that the deceased was notified of the charges, afforded a hearing, allowed to make representations, and given a right of appeal, which he exercised. It was further submitted that procedural fairness does not require a process akin to a court trial, and that minor omissions or missteps that do not occasion prejudice should not invalidate an otherwise fair process. It is the Respondent's submission that the deceased's dismissal was lawful, valid, and procedurally fair, and that he was not entitled to the reliefs sought.
42. Overall, the claimants case overwhelms that of the respondent. This is because they have on a balance of probabilities and preponderance of evidence established a case of unfair termination of employment. The disciplinary process leading to the termination of employment of the claimant was through and through flawed and a contravention of the provisions of inter alia sections 41,43 and 45 of the *Employment Act*, 2007. This is well illustrated by the case and submissions of the claimant above. I therefore find a case of unlawful termination of employment and hold as such. This answers the 1st issue for determination.
43. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.
44. I am therefore inclined to allow the claim and order relief as follows;
- i. A declaration be and is hereby issued that the termination of employment of the deceased by the Respondent was wrongful, unfair and unlawful.
  - ii. One months (1) salary in lieu of notice ..... Ksh.72,034.00
  - iii. Three (3) month's salary.....Ksh.216,102.00



- iv. Gratuity at 31% .....Ksh.20,714.20
- v. Unpaid leave days..... Ksh.139,420.65
- vi. Unpaid acting allowance before suspension.....Ksh.30,069.00
- Total of Award .....Ksh.478,339.85
- vii. The costs of this cause shall be borne by the Respondent.

**DELIVERED, DATED AND SIGNED THIS 25<sup>TH</sup> DAY OF FEBRUARY 2026.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Miss Mutuku Holding brief for Milimu instructed by Cecilia Milimu Advocates for the Claimant

Mr. Mungai instructed by Mohamed Muigai Advocates for the Respondent.

