

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E183 OF 2023

LAWRENCE GICHARU MWANGI.....
CLAIMANT

VERSUS

JUDICIAL SERVICE COMMISSION.....
.....RESPONDENT

JUDGMENT

Introduction

1. In a Memorandum of Claim dated 22nd February, 2023, the Claimant seeks the following reliefs as against the Respondent: -

- i. Re-instatement to his position without loss of benefits as provided for by the Industrial Court Act.
- ii. Alternatively, the Claimant seeks 12 monthly salary compensation for wrongful dismissal and loss of employment as follows: -
 - a) Full salary for the period between the time of suspension/interdiction on 26/6/2015 and the day when his appeal was rejected on 3/10/2022.
 - b) 12 months' salary for wrongful termination @ Kshs 104, 410.00 X 12= Kshs. 1,252,920/=

- c) Severance pay @ 15days for every year worked 21 years
 - d) A certificate of service as provided for in Section 51 of the Employment Act, 2007
- iii. Interest on (a), (b), and (c).
2. The Respondent entered an appearance on 18th April, 2023, and subsequently filed a Statement of Response and Counterclaim dated 20th September, 2023, denying the Claimant's claim, and further counterclaims against the Claimant for the loss of Kshs.836,000.00.
 3. The Claimant filed a Reply to the Response and the Counterclaim dated 28th April, 2024, denying the Counterclaim.
 4. The Claimant's case was heard on 30th April, 2025, when the Claimant testified in support of his case. The Respondent's case was subsequently heard on 5th November, 2025, with one Mr. Isaac Kamau testifying in support of the Respondent's case.
 5. Submissions on the matter were filed for both parties and have been duly considered.

The Claimant's Case

6. The Claimant states that he joined the Judiciary in 2001 and served diligently until his interdiction and subsequent dismissal. He avers that in 2015, he was accused of failing

to bank cash bail amounting to Kshs.836,000 for cases where accused persons did not attend court.

7. The Claimant states that he was interdicted on 8th June 2015, placed on half salary, and required to report weekly to Kibera Law Courts. The Claimant denies the allegations in a letter to the Chief Justice later that month.
8. It is his case that, in 2015, he was also charged with stealing by servant in Nairobi Criminal Case No. 1310 of 2015, but was acquitted on 18th June 2021 after the court found the evidence insufficient.
9. He avers that following his acquittal, he submitted the judgment on 22nd September 2021 to the Respondent and requested reinstatement, but was instead summoned to a disciplinary hearing on 21st October 2021, and was subsequently dismissed from the Judicial Service on 22nd December 2021.
10. The Claimant states that in the dismissal letter dated 22nd December 2021, he was not provided with the proceedings of the Judicial Service Commission meeting of 9th December 2021, nor informed whether his earlier letter of 22nd September 2021, attaching the judgment that acquitted him, had been considered.
11. It is his case that he appealed the decision on 10th January 2022, but the appeal was dismissed, and the outcome was

communicated in a letter dated 7th June 2022, following a meeting held on 30th May 2022, with guidance that he could seek a review within six months. He avers that he subsequently filed another appeal/review on 2nd September 2022, but on 3rd October 2022, the Respondent upheld the dismissal, thereby exhausting all internal appeal mechanisms.

12. The Claimant further states that during his employment, he had been promoted several times and received salary and benefit improvements.

13. The Claimant challenges the dismissal decision of 22nd December 2021, arguing that the decision failed to consider his acquittal in the criminal case and was not supported by any factual evidence or clear reasons communicated to him.

14. He contends that the disciplinary committee erred in law and fact by effectively punishing him for an offence for which he had already been acquitted by a competent court, and further claims that the process was prejudicial, particularly due to the move to involve the Asset Recovery Agency before the appeal process was concluded.

15. The Claimant further maintains that the committee acted unfairly by relying on unsubstantiated evidence, failing to provide reasons for its decision, and treating his acquittal as if it were a conviction.

16. The Claimant asserts that the decision to dismiss him from the Judicial Service lacked any valid or reasonable basis, rendering it null and void for violating principles of a fair and just process.
17. He further argues that the committee abused its discretion by dismissing him despite evidence in his favour, and that the decision contravened constitutional provisions relating to fairness, transparency, access to information, fair labour practices, and the right to a fair hearing.
18. On cross-examination, the Claimant confirmed that he was allowed sufficient time to respond to the charges, and on dismissal, the reasons were given, which were failure to deposit Kshs.836,000/-. He further confirmed that he responded to the show cause, was invited to the disciplinary hearing, and attended the hearing.
19. The Claimant further confirmed that the disciplinary process was separate from the criminal case and that the minutes of the hearing are before the court, and they confirm what transpired during the hearing.
20. He denied the letter dated 18th May 2015, but admitted not having forensic evidence showing that the handwriting on the letter was not his, and further denied that any money was not accounted for.

21. He stated that he was not aware whether the Kshs.836,000 was ever recovered.

22. The Claimant finally states that he is entitled to the reliefs sought and prays that his claim be allowed with costs.

The Respondent's Case

23. The Respondent denies the Claimant's allegations and maintains that the termination of his employment was fair, lawful, and procedurally proper, based on valid grounds.

24. The Respondent states that the Claimant was employed on 8th February 2001 as a Clerical Officer and initially posted to Kithimani Law Courts. It disputes the claim that he performed his duties diligently throughout his service, up to his dismissal on 22nd December 2021 while serving as a Senior Accounts Assistant at Kibera Law Courts.

25. The Respondent states that the Claimant was posted to Kibera Law Courts in August 2014 as a Senior Accounts Assistant, where he was assigned duties by the accountant in charge, Ms. Carol Kodo, and that his responsibilities included updating the deposit ledger, filing payment records, and receipting fines and cash bail.

26. The Respondent states that the Claimant's performance in his assigned duties was poor, as reflected in a Performance Report dated 8th May 2015. It specifically avers that he failed to properly update the deposit ledger, leading other staff to take over the task. It further avers that his filing of

records was inadequate, with gaps in the tracking files due to the failure to update the movement ledger.

27. The Respondent states that in handling fines and cash bail, the Claimant reportedly omitted reference numbers, recorded incorrect amounts, and posted entries to the wrong accounts, complicating financial reconciliation. Additionally, it avers that he was unable to confirm transactions online, update the Judiciary Financial Management System, or assist in processing cash bail refunds.

28. The Respondent states that due to the Claimant's poor performance, the accountant in charge reassigned him after a departmental meeting to handle collection of cash bail forfeitures in open court, including receipting and banking the cash after court sessions.

29. The Respondent states that the Claimant performed this role until May 2015, when a review of the accounts revealed that he had failed to deposit forfeiture funds amounting to Kshs.686,000, whereupon, the Chief Magistrate issued a letter dated 7th May 2015 requiring him to explain within one week why the receipted funds had not been banked. The Respondent further states that the Accountant in Charge at Kibera Chief Magistrates Court submitted a performance report dated 8th May 2015 to the Chief Magistrate, recommending that the Claimant be replaced with more reliable staff.

30. The Respondent further relies on a handwritten letter dated 18th May 2015 in which the Claimant allegedly admitted responsibility for an unaccounted sum that had risen to Kshs.836,000 and undertook to either trace the banking records or refund the amount. It avers that based on this admission, the Acting Director of Finance then wrote to the Director of Human Resource and Administration on 18th May 2015, requesting that disciplinary action be taken against the Claimant with immediate effect.

31. The Respondent states that the Claimant was interdicted on 8th June 2015 from performing his duties, as disciplinary proceedings were about to commence, and that the interdiction was issued by the Chief Justice under Paragraph 16 of the Third Schedule of the Judicial Service Act, 2011. It avers further that the Claimant was also served with a notice to show cause dated 8th June 2015, requiring him to respond within 21 days to allegations of failing to bank cash bail from cases where accused persons failed to attend court, allegedly causing a loss of Kshs 836,000 to the Judiciary.

32. The Respondent further avers that although the Claimant in his response dated 26th June 2015 denies the charge, this denial is inconsistent and contradicts his earlier handwritten letter dated 18th May 2015, in which he admitted to the charge.

33. It avers further that, acting on instructions from the Chief Registrar of the Judiciary, the Claimant's conduct was reported to the Banking Fraud Unit, leading to criminal charges in Nairobi MCCR No. 1310 of 2015 for stealing by servant.

34. It maintains that, though the Claimant was later acquitted on 18th June 2021, it declined his claim for reinstatement and maintains that it lawfully subjected him to a disciplinary hearing on 21st October 2021, in accordance with the Judicial Service Act, to answer to the earlier charge.

35. The Respondent contends that the Claimant was accorded a fair and procedurally sound disciplinary process in compliance with the Judicial Service Act, 2011. It states that the Claimant was given multiple opportunities to respond to the allegations, both in writing and in person, was adequately informed of the charges, and was given sufficient time and notice to prepare his defense.

36. The Respondent further states that the Claimant was allowed to present evidence, call witnesses, and be represented, and had access to all documents relied upon. The Respondent further avers that the dismissal was properly communicated with reasons, and that the Claimant exercised his rights of appeal and review, both of which were considered and dismissed with reasons.

37. The Respondent admits that it considered the Human Resource Management Advisory Committee's findings on 9th December 2021, together with the Claimant's prior letters and the criminal judgment, and relied on them to dismiss the Claimant on 22nd December 2021.

38. It further states that the Claimant exercised his right of appeal, which was considered and dismissed on 7th June 2022, and subsequently sought a review, which was also dismissed on 3rd October 2022 for lack of new evidence.

39. The Respondent maintains that the termination was lawful and justified, based on financial discrepancies involving unbanked court funds amounting to Kshs.686,000 and the Claimant's earlier admission. It asserts that the Claimant's conduct violated internal financial and human resource policies and amounted to gross misconduct warranting dismissal under the applicable laws. Additionally, the Respondent emphasizes that its internal disciplinary process is independent of the criminal proceedings, and therefore, the Claimant's acquittal does not invalidate the disciplinary action taken against him.

40. The Respondent asserts that under the Judicial Service Act, an acquittal in a criminal case does not bar disciplinary action based on different charges arising from the same conduct. It maintains that the disciplinary charge of under-banking forfeited cash bail was distinct from the criminal charge of stealing by servant.

41. The Respondent further states that the Claimant was provided with evidence and given an opportunity to produce banking records to refute the allegations, but failed to do so. Additionally, it contends that it was entitled to refer the matter to the Asset Recovery Agency to recover the alleged funds, and that such recovery would not prejudice the Claimant since any recovered sums would be refunded if his appeal succeeded.

42. The Respondent states that the Claimant was duly informed of the reasons for his dismissal in the letter dated 22nd December 2021, citing gross misconduct for failing to bank the forfeited cash bail, resulting in a loss of Kshs. 836,000.

43. The Respondent states that the Claimant's claim for reinstatement is not feasible due to the long period he has been out of employment and the strained relationship caused by the financial loss. It contends that the Claimant is not entitled to full salary during interdiction, as the law provides only half salary unless cleared of disciplinary charges, and, in any case, he did not render services during that period.

44. Finally, the Respondent asserts that claims for compensation, including 12 months' salary and severance pay, are unfounded since the dismissal was both substantively justified and procedurally fair, and therefore the Claimant is not entitled to any of the reliefs sought.

45. On the Counterclaim, the Respondent seeks recovery of Kshs.836,000, being the amount allegedly not banked by the Claimant, which it avers had he admitted responsibility for and undertook to refund, but failed to do so.

46. The Respondent further contends that the Claimant's actions caused financial loss and undermined public confidence in the administration of justice. It relies on the Claimant's letter dated 18th May 2015 as evidence of his admission and commitment to repay. Consequently, the Respondent prays for dismissal of the Claimant's case with costs and seeks judgment against the Claimant for the Kshs.836,000, and interest from 8th June 2015 until full payment, together with costs of the counterclaim.

Analysis and Determination

47. The following issues crystallize for determination: -

- a) Whether the Claimant was unfairly dismissed
- b) Whether the Claimant is entitled to the reliefs sought.
- c) Whether the Respondent is entitled to the reliefs sought under the Counterclaim.

Whether the Claimant was unfairly dismissed

48. In determining the fairness or lack thereof of a termination or dismissal process, the court considers the employer's adherence to both procedural and substantive fairness espoused under Sections 41, 43, and 45 of the Employment Act, 2007.

49. Section 41 of the Employment Act states thus on procedural fairness:

“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.”

50. The Claimant's position is that he was unfairly dismissed from the service of the Respondent, arguing that the decision failed to consider his acquittal in the criminal case and was not supported by any factual evidence or clear reasons. He contends that the disciplinary committee erred in law and fact by effectively punishing him for an offence for which he had already been acquitted by a competent court, and further claims that the process was prejudicial.

51. The Claimant admitted on cross-examination that he received a show cause letter, responded to it, that he was invited to a disciplinary hearing, and which he confirmed attending. He further confirmed that he was given reasons

for dismissal, and exercised his right of appeal and even lodged a review against the dismissal.

52. In ***Philip Kimosop v Kingdom Bank Limited (2022) eKLR***, the Court opined that the Respondent's action of serving a show cause letter to the Claimant, inviting the Claimant to an oral hearing, giving the Claimant the right to call witnesses, produce documents, and also be represented by another employee at the hearing, constituted fair procedure. The Court emphasized that all these steps taken by the Respondent prior to terminating the Claimant's employment, qualified as following due procedure as contemplated by Section 41 of the Employment Act.

53. Further in ***Silvester Malei Kyengo v Kenya Meat Commission (2019) eKLR***, the Court opined: -

“In this case, the Claimant was first served with a show cause letter stating the charges against him, interdicted pending investigation, accorded an oral hearing in the company of another employee of his choice, and finally served with a termination letter confirming that his defense was considered but his services terminated for reasons cited in the letter. Such procedure in my view passes the test of procedural fairness, and I so hold.”

54. The evidence before the court shows that the Claimant was notified of the charges levelled against them, allowed an opportunity to respond, and invited to appear before a disciplinary committee.

55. In the circumstances, I hold that the Respondent complied with the tenets of procedural fairness, and this renders the dismissal procedurally fair.

56. On substantive fairness, Sections 43 and 45 of the Employment Act, 2007, require that an employer prove valid and fair reasons for termination. The standard of proof expected of an employer under these provisions is on a balance of probability, and not beyond a 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. In ***Bamburi Cement Limited vs. William Kilonzi [2016] eKLR***, the Court of Appeal expressed itself on the nature of proof required as follows: -

"The question that must be answered is whether the appellant's suspicion was based on reasonable and sufficient grounds. According to section 47(5), the burden of proving that the dismissal was wrongful rests on the employee, while the burden of justifying the grounds of wrongful dismissal rests on the employer. It is a shared burden, which strictly speaking amounts to the same thing..... The test to be applied is now

settled. In the case of the Judicial Service Commission vs. Gladys Boss Shollei, Civil Appeal No.50 of 2014, this Court cited with approval the following passage from the Canadian Supreme Court decision in Mc Kinley vs. B.C.Tel. (2001) 2 S.C.R. 161.

“Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer.”

57. The Claimant asserts that the committee acted unfairly by relying on unsubstantiated evidence, and failing to provide reasons for its decision, and treating his acquittal as if it were a conviction.

58. The Respondent, on its part, contends that the Claimant failed to bank cash bail amounting to Kshs.836,000, and that he even admitted not having banked the cash bail in a letter dated 18th May 2015.

59. The Claimant, both in his pleadings and his oral testimony, denied authorship of the admission letter or that he did not bank the cash bail, and relied heavily on his acquittal in the criminal case. The court notes, however, that he did not provide forensic proof that the handwritten letter was not authored by him.

60. In discharging its burden of proof, the Respondent relied on financial discrepancies, which showed that Kshs.686,000, which later rose to Kshs.836,000 was not banked, the Claimant's performance reports, and the alleged admission letter of 18th May 2015.

61. The Claimant, on his part, did not produce banking records to rebut the allegation; he also admitted being given an opportunity to respond and failed to disprove the authenticity of the admission letter.

62. In ***CMC Aviation Limited v Mohammed Noor [2015] KECA 775 (KLR)***, the Court held that an employer only needs a reasonable belief, based on evidence, that misconduct occurred. Further in ***CFC Stanbic Bank Limited vs. Danson Mwashako Mwakuwona [2015] eKLR***, the Court of Appeal held that it is not for the court to

substitute its own '*reasonable grounds*' for those of the employer.

63. On the acquittal, it is now settled that an employee's acquittal in criminal proceedings does not bar an employer from taking disciplinary action based on the same set of facts, on the premise that criminal and disciplinary processes are distinct. **(See Attorney General & Another v. Maina Githinji & Another (Civil Appeal No. 21 of 2015)).**

64. Further, disciplinary proceedings are contractual matters that are decided on a lower standard, unlike criminal charges that carry a higher standard of proof. It is also prudent to point out that the principle of 'double jeopardy' does not apply in employment matters.

65. In **Judicial Service Commission & Another V. Nyagol (2024) KECA**, the Court of Appeal distinguished criminal and disciplinary standards of proof, and affirmed the employer's right to proceed under the Judicial Service Act post acquittal and rejected the double jeopardy argument.

66. In conclusion, I find and hold that the Respondent has demonstrated a valid and justifiable reason for dismissal, hence the Claimant's dismissal is substantively fair and lawful.

67. In the end, it follows that the Claimant's dismissal from the service of the Respondent is both procedurally and substantively fair and lawful, and so I hold.

Whether the Claimant is entitled to the reliefs sought

68. Having held the Claimant's dismissal fair and lawful, the only relief that he is entitled to is the issuance of a certificate of service pursuant to Section 51 of the Employment Act, 2007.

Whether the Respondent is entitled to the reliefs sought under the Counterclaim

69. The Respondent in its Counterclaim seeks an order compelling the Claimant to pay Kshs.836,000 being forfeited cash bail that he did not bank. The Respondent has placed before the court financial records and an admission letter authored by the Claimant, committing to repay the amount.

70. The Respondent further contends that the Claimant failed to account for funds that were entrusted to him.

71. The Claimant did not at all lead contrary evidence by production of banking slips to show that he banked the money. He further did not deny having received the cash for banking from the Respondent and has further not disapproved the admission letter produced in evidence before the court.

72. In light of the foregoing, I find and hold that the Respondent has proved the Counterclaim on a balance of probabilities.

73. In whole, the Claimant's Memorandum of Claim dated 22nd February, 2023, is devoid of merit and is hereby dismissed with costs save only for an order that the Respondent issue the Claimant with a certificate of Service within 14 days of this Judgment.

74. Conversely, the Respondent's Counterclaim succeeds in the following terms: -

- a) Judgment is entered for the Respondent (Claimant in the Counterclaim) against the Claimant (Respondent in the Counterclaim) for Kshs. 836,000/-
- b) Costs of the suit (main Claim) are awarded to the Respondent, and I make no orders on costs in respect of the Counterclaim.

75.It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 23RD DAY OF APRIL, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Paul Macharia present for the Claimant

Mr. Wesonga h/b for Mr. Musyoka for the Respondent

Ms. Esther S- C/A