



**Amasava v Kenya Revenue Authority & another (Civil Appeal  
E380 of 2021) [2025] KECA 512 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KECA 512 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL E380 OF 2021  
F SICHALE, F TUIYOTT & FA OCHIENG, JJA  
MARCH 21, 2025**

**BETWEEN**

**CHRISTOPHER AMASAVA ..... APPELLANT**

**AND**

**KENYA REVENUE AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

*(An Appeal from the Judgment of the Employment and Labour Relations Court  
at Nairobi (Makau, J.) dated 4th March 2021 in Petition No. 34 of 2017)*

**JUDGMENT**

1. The appellant herein was employed by the 1<sup>st</sup> respondent as a revenue clerk with the income tax department of the Ministry of Finance in 1986. By a letter dated 23<sup>rd</sup> September 1996, he was absorbed by the 1<sup>st</sup> respondent as a higher clerical officer. On 19<sup>th</sup> August 2002, he was promoted to the position of assistant revenue officer.
2. On 18<sup>th</sup> May 2006, he was arrested by the officers of the Kenya Anti-Corruption Commission, now defunct. The appellant and another employee were charged in CMACC No. 35 of 2006 on 19<sup>th</sup> May 2006 for the offence of soliciting a bribe contrary to Sections 39(3) (a) and 48(1) of the *Anti-Corruption and Economic Crimes Act*, “ACECA”. He was then suspended through the 1<sup>st</sup> respondent’s letter dated 22<sup>nd</sup> May 2006, on the ground that the charges against him were against the 1<sup>st</sup> respondent’s Code of Conduct. He responded to the letter of suspension through his letters dated 23<sup>rd</sup> and 29<sup>th</sup> May 2006. He was then invited for a disciplinary hearing on 7th September, 2006.
3. Being aggrieved by the 1<sup>st</sup> respondent’s decision to commence disciplinary proceedings against him, the appellant instituted judicial review proceedings against the 1<sup>st</sup> respondent in HC Misc. Case No. 493 of 2006. While the case was pending before the court, the 1<sup>st</sup> respondent proceeded with the disciplinary



hearing, and by a letter dated 13<sup>th</sup> September 2006, the appellant was dismissed from employment on grounds of misconduct.

4. The charges against him were later withdrawn under Section 84A of the *Criminal Procedure Code* on 11<sup>th</sup> January 2012. He then appealed against the decision of the 1<sup>st</sup> respondent on 13<sup>th</sup> February 2012. Despite serving a reminder on the 1<sup>st</sup> respondent on 20<sup>th</sup> February 2012, it did not respond.
5. These events prompted the appellant to file the petition before the trial court on 4<sup>th</sup> July 2016. His claim was that his dismissal was in contravention of his fundamental rights, as the 1<sup>st</sup> respondent failed to ascertain and recognize that his arrest and arraignment in court were irregular and illegal, for failure to adhere to Section 35 of the ACECA.
6. The appellant further contended that his suspension was in breach of his rights as he was denied his salary and benefits, and he was not paid his pension for the years he had worked. However, he conceded that he was paid the refund of his pension contributions and he even signed a clearance form.
7. The appellant sought the following orders:
  - “ a) A declaration that the petitioner’s rights as enshrined in *the Constitution* with respect to fair employment practices had been infringed by the acts or omissions of the 1<sup>st</sup> respondent.
  - b) A declaration that clause 9 of the 1<sup>st</sup> respondent’s Code of Conduct is unconstitutional.
  - c) A declaration that the petitioner’s dismissal was irregular, unlawful, and unconstitutional.
  - d) A declaration that the petitioner is deserving of his due salary, allowances and benefits from May 2006 to December 2015, amounting to Kshs. 12,217,848.
  - e) A declaration that the petitioner is deserving of damages to be assessed by this court.
  - f) A declaration that the petitioner is due and deserving of his pension for the years worked in public service with the 1<sup>st</sup> respondent.
  - g) Costs and interest.”
8. In response to the claim, the 1<sup>st</sup> respondent stated that it was guided by clause 9 of its Code of Conduct, which allowed it to take any disciplinary action notwithstanding the pendency of criminal proceedings, in dismissing the appellant. The 1<sup>st</sup> respondent averred that it could not have contravened Article 50(1) (o) of *the Constitution* because it was not promulgated at the time of the appellant’s dismissal in 2006.
9. According to the 1<sup>st</sup> respondent’s human resource manager, the appellant was afforded a hearing before the disciplinary hearing on 7<sup>th</sup> September 2006 before he was dismissed. He further stated that the appellant preferred judicial review proceedings against the 1<sup>st</sup> respondent instead of an appeal as provided for under Part 8 of the Code of Conduct. He stated that the appellant’s appeal was ignored because the time for lodging the same had lapsed, despite the same having been stayed by the judicial review proceedings.
10. He further stated that the 1<sup>st</sup> respondent cleared the appellant, and there were no pending dues owing to him.



11. In answer to the 1<sup>st</sup> respondent's statement of response, the appellant contended that the 1<sup>st</sup> respondent failed to give him the requested documents, and sufficient time to defend himself before the disciplinary committee on 7<sup>th</sup> September 2006; this was in contravention of Article 50(e) of the Constitution.
12. He further stated that the 1<sup>st</sup> respondent's Code of Conduct could not substitute for an existing law; he reiterated that he had every right to institute the proceedings under Article 22(1) of the Constitution.
13. The appellant stated that his dismissal was unfair under Section 45(2) of the Employment Act as the 1<sup>st</sup> respondent failed to prove that it was in accordance with fair procedures under Section 41. He contended that the 1<sup>st</sup> respondent could only interdict and suspend him, but it could not dismiss an employee whose case was initiated by the defunct KACC.
14. Upon evaluating the evidence before the court, the learned Judge noted that the Employment Act was enacted one year after the dismissal of the appellant; whilst the Constitution was promulgated four years after the cause of action accrued herein. The learned Judge relied on the provisions of Articles 263 and 264 of the Constitution, and the case of Samuel Kamau Machari & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR, in holding that the applicable law in this case was the former Constitution and the Employment Act, Cap 226, as the law does not apply retrospectively.
15. The learned Judge held that clause 9 of the 1<sup>st</sup> respondent's Code of Conduct was not inconsistent with Section 62 of the ACECA and that the 1<sup>st</sup> respondent was entitled to take disciplinary action against the appellant, including suspension without pay or dismissal, notwithstanding the pendency of the corruption charges in court.
16. The learned Judge further held that under the repealed Employment Act, Cap 226, the employer had no obligation to explain to the employee the reasons for dismissal or to ensure that there was fair process in the dismissal unless it was provided for under the contract of employment.
17. The learned Judge pointed out that the appellant was suspended under clause 6B(b) (iv) & (vi) of the 1<sup>st</sup> respondent's Code of Conduct which provided that an employee would not earn a salary during the suspension period, but was to be paid a house allowance. The learned Judge then referred to Section 62(4) of the ACECA and proceeded to hold that the appellant's suspension without pay on the basis of the charges against him was lawful and fair.
18. The learned Judge while referring to clause 7.9 of the 1<sup>st</sup> respondent's Code of Conduct, held that Section 17 of the repealed Employment Act required the employer to establish on a balance of probability that the employee was guilty before being summarily dismissed for an alleged misconduct. The learned Judge observed that in this case, the 1<sup>st</sup> respondent did not conduct its own investigations into the bribery allegations nor did it give the employee an opportunity to defend himself under clause 11. The learned Judge based the said conclusion on the evidence of RW1 who conceded that the 1<sup>st</sup> respondent did not conduct investigations into the bribery allegations against the appellant, but terminated the appellant on the basis of the information that he had been charged in court for soliciting a bribe from a taxpayer.
19. It was the finding of the trial court that the failure to provide the appellant with the information he had requested, as conceded to by RW1, could lead to an inference that either the information was lacking or it was prejudicial to the 1<sup>st</sup> respondent. The learned Judge held that since there was a failure by the 1<sup>st</sup> respondent to establish the allegation of soliciting a bribe against the appellant, there was no basis for dismissing him. The trial court was of the view that the 1<sup>st</sup> respondent could have suspended the appellant until the outcome of the corruption case.



20. The learned Judge further held that the appellant was dismissed from employment by a person not qualified to do so as his dismissal letter was signed by the senior deputy commissioner, and not the commissioner general as provided for under clause 7. 9. The learned Judge observed that this action was contrary to Section 11(4) of the [Kenya Revenue Authority Act](#), having been done without the prior approval of the board and also without a Gazette notice of delegation of power to dismiss.
21. Consequently, the learned Judge held that the dismissal of the appellant was unlawful and wrongful.
22. The learned Judge also held that the time within which the appellant ought to have lodged an appeal against his dismissal had lapsed.
23. As regards the orders sought, the learned Judge held that the appellant's claim had not been pleaded with the precision of the alleged infringement, the constitutional provision alleged to have been infringed; and the manner in which they were infringed, and therefore, the claim did not meet the competence threshold required of a constitutional reference claim.
24. Although the learned Judge held that the appellant's dismissal was irregular and unlawful, he declined to make an order that the appellant was deserving of salary, allowances, and benefits from May 2006 to December 2015 amounting to Kshs. 12,217,848 because there was no legal or contractual basis, given that such benefits are only available to an employee in service and not former employees after their dismissal.
25. The learned Judge dismissed the prayer for damages for being vague and because the court cannot assist a party to plead its claim. In any event, an award for damages would be prejudicial to the 1<sup>st</sup> respondent who would not have the opportunity to challenge it.
26. The learned Judge held that the appellant was entitled to his pension for the years worked in the public service with the respondent, less the amount paid after the dismissal.
27. Consequently, judgment was entered in favour of the appellant with an order for each party to bear own costs.
28. Being dissatisfied with part of the judgment, the appellant lodge the present appeal vide the memorandum of appeal dated 7<sup>th</sup> July 2021. He raised the following grounds of appeal to wit that:
  - a. The learned Judge erred in failing to recognize that clause 9 of the 1<sup>st</sup> respondent's code of conduct is unfair, unlawful, unconstitutional, and inconsistent with the provisions of the [Interpretation and General Provisions Act](#) and the ACECA.
  - b. The learned Judge erred in failing to find that the 1<sup>st</sup> respondent's code of conduct did not have provisions for unspecified or indeterminate suspension.
  - c. The learned Judge erred in holding that the timeline for lodging an appeal with the 1<sup>st</sup> respondent had lapsed.
  - d. The learned Judge erred in failing to find that the appellant was deserving of salary, allowances, and benefits from May 2006 to December 2015 amounting to Kshs.12,217,848.
  - e. The learned Judge erred in failing to appreciate the ruling dated 18<sup>th</sup> January 2019 (N. Abuotha, J.).
29. When the appeal came up for hearing on 16<sup>th</sup> September 2024, learned senior counsel, Dr. Khaminwa appeared for the appellant while Mr. Andambi Chabala, learned counsel appeared for the 1<sup>st</sup> respondent. There was no appearance by the 2<sup>nd</sup> respondent despite being served by email on 24<sup>th</sup>



August 2024 at 11:29 a.m. Counsel relied on their respective written submissions which they briefly highlighted.

30. Dr. Khaminwa submitted that the disciplinary committee was prejudiced, did not want to hear the appellant's case, and did not accord him a fair hearing. However, the learned Judge did not take this into account and did not award the appellant any damages.
31. In his written submissions, the appellant submitted that Section 93 of the *Employment Act* which provided for transitional provisions could be applied retrospectively and therefore, the *Employment Act* 2007 could be applied in this case.
32. On whether the appellant was entitled to damages for unlawful termination, he submitted that the 1<sup>st</sup> respondent did not adduce any evidence to show that he was paid his terminal dues upon dismissal. He prayed for his salary and allowances during the period of his 4-month suspension, accumulated leave days, one month's salary in lieu of notice of Kshs.58,734, and a certificate of service.
33. Regarding whether the appellant deserved salary, allowances, and benefits from May 2006 to December 2015 amounting to Kshs.12,217,848, the appellant submitted that he had a constitutional right to be reinstated to his position, with back salaries as was stated in his letter of appeal dated 13<sup>th</sup> February 2012. Again, the issue of reinstatement was not pleaded on the grounds of appeal and before the trial court.
34. Mr. Chabala refuted the appellant's claim that he was not given a fair hearing and referred the court to pages 45-52 of the record and submitted that the record showed that there was a clear chain of events leading to the appellant's dismissal.
35. On the issue of damages, counsel submitted that the learned Judge correctly held that there was no basis in law or in the contract to award damages, and there was no evidence on record upon which the court could proceed to grant damages. The 1<sup>st</sup> respondent submitted that the appellant sought to specifically plead the claim for damages in paragraph 17 of his submissions before this court, and in so doing, he justified the learned Judge's finding that the prayer for damages before the trial court was vague and the court could not assist him in pleading the same at the judgment stage.
36. Relying on the case of *Rook v Rairre* [1941] 1 ALL ER 297, the 1<sup>st</sup> respondent submitted that general damages are only awarded where a claimant establishes in principle, his entitlement and the court assesses the quantum of such damages. The 1<sup>st</sup> respondent further submitted that for this Court to reverse an award for damages, it must be satisfied that the trial court acted upon wrong principles of law, or that the amount awarded was extremely high or so very low as to make it an entirely erroneous estimate of the damage to which one is entitled to.
37. In its written submissions, the 1<sup>st</sup> respondent refuted the appellant's submission that the *Employment Act*, 2007 was applicable in this case. It referred to the trial court's determination on the matter and quoted with approval, the learned Judge's finding that the applicable law in this case was the former Constitution and the *Employment Act*, cap 226. The 1<sup>st</sup> respondent submitted that the appellant was afforded a fair hearing under the *Employment Act*, cap 226, and its code of conduct before his dismissal from employment.
38. The 1<sup>st</sup> respondent submitted that the appellant's contract of employment did not provide for a notice period in case of termination. Citing the case of *Kenya Revenue Authority v Menginya Salim Murgani* [2010] eKLR, the 1<sup>st</sup> respondent submitted that the learned Judge properly addressed himself in declining to award the appellant the salary, allowances, and benefits from May 2006 to December 2015 amounting to Kshs.12,217,848. It further submitted that this was a discretionary finding which does not warrant this Court's interference.



39. In a brief rejoinder, Mr. Khaminwa submitted that the learned Judge relied on unjustified technicalities and the appellant having worked for the 1<sup>st</sup> respondent for a long time, was entitled to damages. Counsel referred the court to the appellant's suspension letter dated 22<sup>nd</sup> May 2006 in submitting that the 1<sup>st</sup> respondent was biased against the appellant from the onset and that the learned Judge failed to take this into consideration.
40. This is a first appeal. Rule 31(1)(a) of the Court of Appeal Rules provides that:
- “(1) On an appeal from a decision of a superior court acting in the exercise of its original jurisdiction, the Court shall have power—
- a. to re-appraise the evidence and to draw inferences of fact;
- b. ...”
41. We must defer to the findings of fact made by the trial Court, especially where they are based on the credibility of witnesses because the trial Court had the added advantage of hearing and seeing the said witnesses testify. Nevertheless, we are entitled to interfere with those findings if they are based on no evidence or upon a misapprehension of the evidence or if the trial Court is shown demonstrably to have acted on wrong principles in reaching the findings. In the case of *Kenya Ports Authority v Kuston (Kenya) Limited (2009) 2EA 212* this Court espoused that mandate or duty as follows:
- “On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
42. We have carefully considered the record, the submissions made by counsel, the legal precedents cited, and applicable laws. The issue for determination is whether the appellant was entitled to the reliefs sought.
43. It is common ground that the learned Judge made a finding to the effect that the appellant's dismissal was unlawful for reasons that although under the *Employment Act*, cap 226 the employer had no obligation to give reasons for dismissing an employee, the 1<sup>st</sup> respondent herein failed to conduct independent investigations into the allegations of bribery leveled against the appellant before he was dismissed from its employment. The learned Judge held that the person who signed the appellant's dismissal letter was not qualified to do so as the commissioner general had the power to dismiss the appellant upon recommendation by the board.
44. The learned Judge found the 1<sup>st</sup> respondent's conduct of failing to give the appellant the documents requested before the disciplinary to be prejudicial to him. In the circumstances, we find no reason to interfere with the trial court's finding on the matter.
45. The issue that then begs to be answered is whether the appellant was entitled to damages. We note that although the appellant submitted on the issue and the 1<sup>st</sup> respondent responded, this issue was not raised in the appellant's grounds of appeal. The 1<sup>st</sup> respondent submitted that the specificity of the damages sought was first raised in the appellant's submissions before this Court. It is trite that parties are bound by their pleadings and the appellant did not plead the specific damages he sought from



the court. In the case of Independent Electoral and Boundaries Commission & Another vs Stephen Mutinda Mule & 3 Others [2014] eKLR, this Court held that:

“As the authorities do accord with our own way of thinking, we hold them to be representative of the proper legal position that parties are bound by their pleadings which in turn limits the issues upon which a trial court may pronounce.”

46. The trial court found the appellant’s claim for damages to be vague. In applying his mind to the issue, the learned Judge held that awarding such damages was tantamount to the court pleading for the appellant and that the same would be prejudicial to the 1<sup>st</sup> respondent who would not have the opportunity to challenge the same.

47. The appellant prayed for damages to be assessed by the court. He did not specify what kind of damages he sought or how the court ought to have assessed the same. In the case of J N Wafubwa v Attorney General & 2 Others [2006] KECA 386 (KLR), the appellant therein sought general damages for illegal and unlawful termination of employment, and the court awarded him general damages for wrongful termination of service assessed at 10 months’ salary as at the date of retirement.

48. In the case of Nation Newspapers Limited v Peter Baraza Rabando [2007] KECA 457 (KLR), this court stated thus:

“...The damages awarded were in the nature of general damages, which are normally in the discretion of the trial court...”

49. As the appellant failed to specifically plead the damages sought before the trial court, the court did not have the chance to fully render itself on the issue and this being an appeal, the matter cannot be determined in the first instance before this court. We can only render ourselves on a matter that has been determined by the trial court. The appellant ought to have specifically stated the kind of damages he wanted, for what period, and at what rate the same ought to have been calculated.

50. In the circumstances, we find no reason to interfere with the discretion of the trial court in declining to award damages for the reason that the prayer was vague.

51. We further hold that since the appellant’s employment letter did not have a provision for payment in lieu of notice as submitted by the 1<sup>st</sup> respondent, and although the court would have been obliged to determine the same as was addressed in the case of Paramount Bank Ltd v Mohammed Ghias Qureishi & another [2005] KECA 302 (KLR)

“It is not in dispute that the Contract of Employment executed by the parties did not specify the notice necessary to terminate the services of the 1<sup>st</sup> respondent with the appellant. The 1<sup>st</sup> respondent proved that he was verbally and summarily dismissed without notice. He was also inhumanly mistreated. Despite the high positions he held in the appellant Bank these were conveniently disregarded by the appellant. It is unfortunate the law does not permit compensation for the injured feelings.

In Lukenya Ranching V. Kavoloto [E.A.] 416 the predecessor of this Court stated that when a court has to decide what is “reasonable notice” one of the factors to be taken into account is the nature of the employment and the availability of other posts of suitable nature. The respondent in that case was a manager of a large cooperative society farm. There was no notice clause in the oral contract of service and no evidence was led to show the availability of any other alternative job of a suitable nature or indeed of any other job at all. The appellate



court agreed with the trial court that a reasonable notice in the circumstances was three months.

In *Kyobe V. East Africa Airways* [1970] E.A. 403, the plaintiff claimed payment of his salary for a period of two years (reduced to one year) following wrongful termination of his service by the defendant. There was no termination clause by notice in his terms and conditions of employment. It was held that the plaintiff was only entitled to a reasonable notice of six months. In *East Africa Airways V. Knight* [1975] E.A. 165, a notice of 18 months was considered reasonable for a pilot, and in *Southern Highlands Tobacco Union Limited V. David Mcqueen* [1960] E.A. 70 the Court said:-

“..... the plaintiff is fifty eight years of age. At that age, it is not easy for a man to find employment, however healthy and able he may be.”

Having considered the authorities in employment contracts and decisions cited to us by counsel, we would re-state the principle as follows. A contract of service must be terminated by notice, unless the hiring is for a definite period. If the contract is silent as to the length of such notice the courts will not construe this as meaning that no notice on either side is required – *Payzu V. Hannafore*, [1918] 2 K.B. 345. The length of notice will be determined by usage (*Hamilton V. Bryant* 30 T.L.R. 408.) If there is no usage, then the Court will find that reasonable notice must be given on either side – *Crediton Gas Company V. Crediton U.D.C.*, [1928] Ch. 174. See Also *Ombanya V. Gailey & Roberts Ltd* [1974] EA 522.”

52. The appellant did not plead payment in lieu of notice before the trial court and as an appellate court, we have no reason to determine the issue in the context of this case.
53. Regarding whether the appellant was entitled to the salary, allowances, and benefits from May 2006 to December 2015 amounting to Kshs.12,217,848, we note that upon his dismissal from the 1<sup>st</sup> respondent’s employment despite the dismissal being determined to have been unlawful, the appellant was no longer an employee of the 1<sup>st</sup> respondent from 13<sup>th</sup> September 2006 when he was dismissed. It follows, that he was not entitled to a salary, allowances, or benefits as he was no longer an employee of the 1<sup>st</sup> respondent. We, therefore, find that this ground of appeal has no merit.
54. In the result, we find that the appeal herein lacks merit and it is dismissed. As regards costs, we order that each party shall meet their own.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH, 2025.**

**F. SICHALE**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

**F. OCHIENG**

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**JUDGE OF APPEAL**



I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

