



**Asebe v Kenya Revenue Authority (Cause E347 of 2022)
[2025] KEELRC 183 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 183 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E347 OF 2022
J RIKA, J
JANUARY 31, 2025**

BETWEEN

ERIC ASEBE CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 25th May 2022.
2. He states that, he was employed by the Respondent State Corporation, as a Clerk in Customs and Border Control Department, on 15th December 2015. His initial salary was Kshs. 25,000 monthly.
3. He worked for 6 years, before his contract was terminated by the Respondent, on 25th February 2022. He states that termination was unfair and unlawful. His last salary was Kshs. 91,000 monthly.
4. He was issued a letter dated 27th January 2022, to appear before the Respondent's Disciplinary Panel, to show cause why disciplinary action should not be taken against him.
5. He appeared before the Panel on 3rd February 2022, and was informed that, he was being investigated with the offence of soliciting a bribe. He asked the Panel for evidence, and was supplied WhatsApp messages involving him and colleagues, alleged to have been related to bribery.
6. He asked the Panel to switch on his phone, to enable him read, and confirm the messages. His phone was in the custody of the Respondent. His request was denied.
7. He received the letter of termination dated 25th February 2022.
8. He states that the Respondent acted maliciously. It approved his promotion, while secretly charging him with solicitation of a bribe; he was denied fair hearing; primary evidence was not adduced; his contract was about to expire, and he had been promised re-employment on permanent and



pensionable terms; and, he was selectively taken through the disciplinary process while colleagues were left out.

9. He prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Reinstatement.
Alternative to [b],
 - c. Notice pay at Kshs. 91,000.
 - d. Severance pay for 6 years worked at Kshs. 409,500.
 - e. 12 months' salary in compensation for unfair termination at Kshs. 1,092,000.
 - f. Annual leave days at Kshs. 127,400.
 - g. Pension dues as per the Kenya Revenue Pension Scheme.
 - h. Certificate of Service to issue.
 - i. Costs.
 - j. Interest.
 - k. Any other suitable order.
10. The Respondent filed its Statement of Response, dated 1st July 2022. It is conceded that the Claimant was employed by the Respondent as a Customs Clerk. His contract was terminated for gross misconduct.
11. A complaint was raised against the Claimant, for soliciting a bribe in the course of his duties, from a company called Ryce East Africa Limited. He was given an opportunity to explain himself, through a letter to show cause, dated 20th December 2021. He was subsequently invited for disciplinary hearing, as pleaded in the Claim.
12. Details of the offence were that, on 11th and 12th November 2019, the Claimant accompanied by colleagues Sheila Barasa and Fredrick Githinji, conducted a compliance check, at Ryce East Africa Limited. The company imports completely knocked down – CKD - motor cycles. The officers identified discrepancies between actual number of imported motor cycles, and what was declared in the control sheets. A demand of Kshs. 44 million issued. The amount was reviewed to Kshs. 16 million.
13. Barasa proceeded on annual leave, leaving the Claimant in pursuit of the tax demand. The Claimant went on to discuss the amount of bribe, to be sought from Ryce Limited. He mentioned a sum of Kshs. 6 million.
14. He was availed the Investigation Report. He relied on it during the disciplinary hearing. He was found culpable of solicitation of a bribe. He acted in breach of the Respondent's Code of Conduct and the *Employment Act*. He was given a fair hearing. The Respondent did not act maliciously. He was given reasons, justifying termination.
15. His contract was terminated on 25th February 2022. He was advised on his right of appeal. He appealed on 18th March 2022. His appeal was reviewed and declined. He was informed about the dismissal of his appeal, through a letter dated 29th March 2022.



16. He was advised that he would be paid his salary up to and including 25th February 2022, and issued his certificate of service, upon clearance and filing of his final wealth declaration form. His Claim has no merit. The Respondent prays the Court to dismiss the Claim with costs.
17. The Claimant gave evidence, and rested his case, on 23rd March 2023. Respondent's Internal investigator, Omar Matano, and Human Resource Manager Francis Kiogora, gave evidence on 24th October 2023. A forensic expert from the DCI, CIP John Mutinda, gave evidence for the Respondent on 7th March 2024, closing the hearing. The Claim was last mentioned on 2nd October 2024, when the Parties confirmed filing and exchange of their closing submissions.
18. The Claimant relied on his witness statement dated 25th May 2022, and documents [1-15], in his evidence-in-chief. He restated that he was employed by the Respondent as a Customs Clerk, and dismissed on allegations of solicitation of a bribe from a taxpayer, Ryce E.A. Limited.
19. He was involved in compliance check on Ryce Limited, with his 2 colleagues. Sheila Barasa went on annual leave. The Claimant was transferred to Moyale at the end of May, 2020. While there, he received an order from the Court, to surrender his mobile phone and SIM card to KRA Investigators. He did so. He was issued a letter to show cause. He was invited for disciplinary hearing at Nairobi. He was accompanied to the hearing by a colleague, Victor. The charge was read to him. He denied the charge. He was asked to step aside. He was later called, and issued a letter of summary dismissal. He was at the time waiting to be moved from contracted service of 3 years, to permanent and pensionable service, the Respondent having approved his transition.
20. Cross-examined, the Claimant told the Court that he was deployed to various offices after his recruitment. He reconciled files from various manufacturers and audited manufacturers, among other duties.
21. He, Sheila and Githinji, visited Ryce Limited for compliance checks. The Claimant had been placed on performance watch. He knew Terry Mburu, from Ryce Limited. Ryce Limited raised a complaint against the Claimant, for solicitation of a bribe. The Investigator did not contact him. He was instead transferred to Moyale. Investigators went to him at Moyale. They picked his phone. He was issued a letter to show cause. He responded. He was called before a Disciplinary Panel. He was supplied the relevant documents prior to the hearing, but not given enough time to study them. He was accompanied at the hearing, by his colleague Victor Otieno.
22. He was offered terminal dues and certificate of service, subject to clearance and filing of income declaration form. He has not cleared with the Respondent. Other phones from other suspects were impounded by the Investigators. A report on communications retrieved from the phones was prepared, and shared with the Claimant. The Claimant was serving on fixed-term contracts. He was about to transition to permanent and pensionable service. The report indicates that Sheila, Githinji, Terry and the Claimant were investigated. It was recommended that disciplinary action is taken against Sheila and the Claimant. Only he, was taken through the disciplinary process.
23. Redirected, he told the Court that his contract had been renewed consistently. Officers normally discussed personal issues on WhatsApp. He was not given an opportunity to explain himself. He requested the Disciplinary Panel to switch on his phone, a request that was declined.
24. Omar Matano adopted his witness statement dated 4th November 2022, and documents filed by the Respondent, as his evidence-in-chief.
25. Cross-examined, he told the Court that Ryce Limited raised the complaint against the Claimant. The complaint was raised through the Respondent's complaints platform. The Claimant solicited a bribe.



- Clause 6.11.2.2 of the Respondent's Code of Conduct, outlaws direct and indirect solicitation or acceptance of bribes.
26. The Claimant discussed solicitation of the bribe with Sheila. He suggested the minimum to be paid was Kshs. 6 million. It was all captured in the investigation report. Omar confiscated the suspects' phones. He did not confiscate Terry's. She was invited to Omar's office, with her phone. He confirmed the content of her texts, but did not have the excerpts. The Respondent relied on the forensic report, not the WhatsApp messages alone.
 27. Omar could not confirm that Commissioner Nyawanda wrote on 3rd May 2021, stating that the 3 officers followed the audit procedure, in dealing with Ryce Limited. In issue was solicitation of bribe. Omar attended the disciplinary hearing. He did not recall the Claimant requesting for his phone to be turned on. The Claimant was involved in solicitation. It is not true the officers were discussing personal business, via WhatsApp. They mentioned Ryce Limited multiple times.
 28. Redirected, Omar told the Court that he carried out his investigation with an open mind. Evidence was obtained from the officers' phones. There was solicitation of a bribe. Compliance checks procedure was not the issue.
 29. Human Resource Manager Kiogora, similarly relied on his witness statement and documents filed by the Respondent [1-55 original bundle and 1-125 supplementary bundle], in his evidence-in-chief.
 30. Cross-examined, he confirmed that the Claimant was invited for disciplinary hearing. Invitation was on 27th January 2022. He was to appear at Nairobi, from Moyale, on 3rd February 2022. Hearing had earlier been scheduled for 18th January 2022 and deferred at the request of the Claimant. The charges were communicated. The Claimant confirms that he attended hearing. There was no vendetta against the Claimant. The charges against the him, were on solicitation of a bribe, not on breach of audit procedure. Officers are allowed to communicate with each other. Their messages stated, among other statements, that, "6 million mwisho."
 31. Redirected, Kiogora told the Court that the Claimant was twice invited for disciplinary hearing, and had sufficient time to prepare. He was advised on his procedural rights. Hearing was fair. Discussions between the officers in WhatsApp, were not personal but criminal. The Respondent did not only rely on the messages, but looked at the forensic report in its totality. The Claimant is entitled to terminal benefits, payable upon clearance.
 32. DCI officer and forensic examiner, John Mutinda, is trained locally and internationally in IT. He receives exhibits from other police officers and conducts forensic examination in digital media, prepares forensic reports, and presents them before the Courts.
 33. He received 6 mobile phones from Omar Matano, on 21st July 2020. Exhibit memo showed the matter under investigation. It related to solicitation of a bribe. He was to examine WhatsApp messages. There was a consent signed by the Claimant for retrieval of data. He also signed an inventory on impounding of his phone at Moyale, witnessed by Head of his branch at Moyale.
 34. Mutinda retained custody of the exhibits. He examined the phones and extracted data, using forensic tools. He prepared a report, exhibited in Respondent's supplementary bundle of documents.
 35. Cross-examined, Mutinda told the Court that he had 15 years' experience in forensics. His report is dated 23rd December 2020. He received the exhibits on 1st September 2020. He used universal extraction device. It is the same tool as the law enforcement tool. The Respondent was the complainant. Mutinda did not know the owners of the phones. He did not know Terry Mburu. The report did not have annexures. It was not Mutinda's role to analyse who the phone owners were. Report



states some data was not extracted, because of PIN and password protection. Claimant gave his consent for extraction of data.

36. Redirected, Mutinda confirmed that the phones and details contained in his report, belonged to the officers, including the Claimant. Details of the Claimant's phone were shown in the consent form he signed, for extraction of data.
37. The issues are whether the Claimant's contract was terminated by the Respondent fairly, under Sections 41 and 45 of the *Employment Act*; whether termination was substantively justifiable under Section 43 and 45 of the *Employment Act*; and whether the Claimant is entitled to the remedies sought.

The Court Finds: -

38. The Claimant was initially employed as a temporary Customs and Border Clerk by the Respondent, on 3rd May 2016. He was subsequently employed on limited-term contracts.
39. He was summarily dismissed for solicitation of a bribe from Ryce E.A. Limited, on 25th February 2022. He was earning a consolidated monthly salary of Kshs. 91,000 at the time of dismissal. He at the time, was on the verge of entry into permanent and pensionable service.
40. Procedure: This was clearly in conformity with the minimum statutory standards of fairness, contemplated under Sections 41 and 45 of the *Employment Act*.
41. He, alongside colleagues Sheila Barasa and Fredrick Githinji, carried out a compliance inspection of motorcycle dealer, Ryce E.A. Limited, on 11th and 12th November 2019.
42. There were discrepancies noted by the officers, and tax demand made upon Ryce Limited to comply.
43. Ryce then raised a complaint on the Respondent's complaint platform, about a demand made by the Claimant and his colleagues to Ryce Limited, to corruptly compromise the tax demand.
44. The record shows that the Respondent's Intelligence and Strategic Operations Department, was called in to investigate.
45. A comprehensive report, dated 25th March 2021, prepared by the Respondent's witness Omar Matano, and Simon Murimi, found that the Claimant and Sheila exchanged text messages, discussing the bribe from the complainant Terry Mburu, of Ryce Limited.
46. It was recommended by the Investigators that disciplinary action should be taken against the Claimant and Sheila, for contravening Section 6.1.2.2.2 of the Respondent's Code of Conduct, which makes it an offence for officers to directly or indirectly, solicit or accept bribes. It was also recommended that the officers are disciplined for contravening Sections 6.1.2.2.12 and 6.1.2.5.4 of the Code, which make it an offence for officers, to attempt theft or fraud against the Respondent, or act negligently and dishonestly, resulting in loss or damage to the Respondent.
47. Subsequently the Claimant was issued a letter to show cause, dated 6th December 2021, detailing the allegations against him. The letter was comprehensive, citing the specific provisions of the *Employment Act*, and the Respondent's Code of Conduct, which the Claimant flouted.
48. The Claimant replied on 20th December 2021, holding as he held before the Court, that he and his colleagues conducted the compliance check at Ryce Limited, in accordance with customs guidelines. He avoided explaining the elephant in the room in detail, which was solicitation of bribe from Ryce Limited. The issue was not that he did not comply with customs guidelines, in conducting the



- compliance exercise; it was that, he demanded for a bribe from Ryce Limited, once the compliance exercise disclosed that Ryce Limited owed KRA taxes.
49. He was invited to appear before the Disciplinary Panel, in a letter dated 18th January 2022. He was advised of his procedural rights under the *Employment Act*.
 50. He was based at Moyale, in the Northern Frontier, and was required to attend hearing at Nairobi, some considerable distance away from his station. Hearing was rescheduled upon his request.
 51. He was heard on the rescheduled date, 3rd February 2022. He concedes that he appeared at Times Towers in Nairobi, and was heard, in the company of a workmate, Victor Otieno.
 52. He was found guilty and summarily dismissed, on 25th February 2022. He lodged an appeal on 18th March 2022. The appeal was considered and rejected, and the decision communicated to him, in a letter dated 29th March 2022.
 53. The Court has not found any flaws with the procedure, including on the extraction of data, from the Claimant's mobile phone. He signed a consent form, and nothing done by Matano and Mutinda, with regard to impounding of the Claimant's mobile phone and extraction of data, can be said to have violated the law on procedural fairness, or the law on data protection.
 54. Procedure was fair, in conformity with the minimum statutory standards of fairness, under Sections 41 and 45 of the *Employment Act*.
 55. Substantive justification: It is important to quote verbatim, Section 43 of the *Employment Act*, which regulates the subject of substantive justification in termination of employment. The Section states: -
"In any claim arising out of termination of employment of a contract, the Employer shall be required to prove the reason, or reasons for the termination, and where the Employer fails to do so, the termination shall be deemed to have been unfair, within the meaning of Section 45.

The reason, or reasons for termination of a contract, are matters that the Employer, at the time of termination of the contract, genuinely believed to exist, and which caused the Employer to terminate the services of the Employee."
 56. Are there matters that the Respondent genuinely believed to exist, and which caused the Respondent to terminate the Claimant's contract?
 57. The Claimant was a Customs and Border Control Clerk. He was subject to the Respondent's Code of Conduct. The Code forbids officers from directly or indirectly soliciting for bribes, stealing from the Respondent, or acting dishonestly or negligently, in a manner that would occasion the Respondent loss or damage. He was a Public Officer, bound by the Code of Conduct and Ethics for Public Officers, and the Values and Principles of Public Service, under Article 232 of *the Constitution*.
 58. It is common evidence that the Claimant and his 2 colleagues were sent to Ryce Limited, for a routine compliance check. They, in accordance with customs guidelines, found Ryce Limited was not compliant.
 59. They retired to their offices at Times Tower, and raised a tax demand initially, in the sum of Kshs. 44 million against Ryce Limited. The Claimant states that the demand was reduced to Kshs. 22.1 million. A reduced sum of Kshs. 16 million was also mentioned. Somewhere down the line, it was proposed to make a tax demand in the sum of Kshs. 39 million. They continued to engage Ryce Limited on the tax demand, and in the process, derailed from legitimate tax demand, to making demand for a bribe,



from Ryce Limited. Ryce Limited raised a complaint, and the Intelligence and Strategic Operations Department, was called in to carry out internal investigations.

60. As observed above, the Claimant's phone and that of his colleague Sheila were impounded and forensically examined. Data extracted consensually from the phones, disclosed WhatsApp messages between the Claimant and Sheila, that offered more than a genuine belief to the Respondent, that the Claimant was involved in employment offences, contrary to the Employment Act, and the Code of Conduct.
61. A report from the Digital Forensic Unit, National Police Service, was exhibited by Mutinda, alongside the report from the Respondent's Intelligence and Strategic Operations Department, exhibited by Matano.
62. The Claimant was asked to comment on texts exchanged between him and Sheila, via WhatsApp. A highlight of these texts, and responses by the Claimant under enquiry, were as follows: -The Claimant writes, "6 m mwisho, kama hataki alipe." [let Terry Mburu [Ryce Limited] pay to us a bribe in the sum of Kshs. 6 million. If she does not pay, she will have to pay the tax demand]. Asked to explain his text, the Claimant made a bare denial. He writes, "vile mnataka ndio itakuwa, amesema aongee na yeye, that's the last word. In that case, also tusiweke mipango hapa, just in case ikuwe ya kulipwa [what you wish is what we shall do...let us not place too much hope here...the taxpayer might pay the tax demand]. He writes further, "hakuna noma...as long as it is reasonable, tutachukua [no problem... as long as the bribe is reasonable, we'll accept it]. The Claimant and his colleague appear to have continued to negotiate the size of the bribe with Ryce Limited. from the initial Kshs. 6 million, to a significantly reduced sum of Kshs. 200,000. The Claimant and Sheila texted, "hapo ndipo tupo...na walipe Kshs. 200k" [that is where we stand, let them pay Kshs. 200,000]. " " hata mkia ni nyama tu" [even the tail is as good as beef steak, meaning Kshs. 200,000 was better than nothing]. The conversations did not end with the cryptic texts, about oxtail and beef steak. It continued, " Ryce walitutoa nyama kwa mdomo" [Ryce pulled the meat from our mouths]. The Claimant and Sheila concluded their texts with an undertaking to raise a demand notice of Kshs. 39 million on Ryce Limited. " Nachora demand kesho, Mama asign" [I will draw the demand notice for the Lady [supervisor] to sign].
63. It appears that solicitation had failed, and in his disillusionment, the Claimant and his colleagues, resorted to making demand for the sum of Kshs. 39 million from Ryce Limited, a far higher amount than had been proposed, while solicitation was in progress. "Nachora demand Kesho," the Claimant swore.
64. In all instances, the Claimant made bare denials about having exchanged the texts above, with Sheila Barasa. In his evidence, the Claimant suggested that the texts were innocent interactions, between officers, and nothing to do with official business.
65. The Claimant and his colleague appear to have become disillusioned with Ryce Limited for not paying the bribe, which has been revised down from Kshs. 6 million, to a Kshs. 200,000. The meat had indeed, been pulled away from their mouths, and they reverted to making a high tax demand in the sum of Kshs. 39 million against taxpayer, Ryce Limited.
66. These texts were shown to have been exchanged between the Claimant and his colleague Sheila. The data was legally extracted from their devices. It was preposterous for the Claimant to suggest in his evidence, that officers were allowed to make personal communication amongst themselves, and that the texts were personal messages between officers, unrelated to official business. The officers specifically discussed Ryce Limited, a company they had been asked to audit, and which they raised a tax demand against. The texts were obviously about solicitation of a bribe. It was against the Employment Act, the Respondent's Code of Conduct, the Anti-Corruption and Economic Crimes Act Cap 65 the Laws of



Kenya, and the *Bribery Act*, 2016. The Claimant violated the high standards of professional ethics, imposed on him by Article 232 of *the Constitution* and the Code of Conduct and Ethics for Public Officers.

67. The Court is satisfied that the Claimant's contract was terminated for valid reason, under Sections 43, 44[4] and 45 of the *Employment Act*.
68. Remedies: The Claimant was summarily dismissed fairly and validly, and the remedies sought are not merited.
69. He was offered terminal benefits and his certificate of service, subject to clearance. He told the Court that he has not cleared with the Respondent to-date. He holds the key, to payment of his terminal dues.
70. Termination was fair and lawful. The Claimant ought to have introspected before lodging the Claim against the Respondent, in light of the weighty evidence of wrongdoing, stacked against him. The Respondent has been compelled to respond to the Claim, over the past 3 years, and has incurred costs. The Claimant shall pay the costs of the Claim to the Respondent.

It is ordered: -

- a. The Claim is declined.
- b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.

JAMES RIKA

JUDGE

