



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi v Kenya Revenue Authority (Cause E559 of 2023)  
[2025] KEELRC 73 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 73 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E559 OF 2023  
L NDOLO, J  
JANUARY 23, 2025**

**BETWEEN**

**ANTHONY MUNYI MWANGI ..... CLAIMANT**

**AND**

**KENYA REVENUE AUTHORITY ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant in this case, Anthony Munyi Mwangi, was an employee of Kenya Revenue Authority, having been employed on 3<sup>rd</sup> November 2014, in the position of Finance Officer, KRA Grade 3. The dispute before the Court was triggered by the Claimant's dismissal on 27<sup>th</sup> July 2022.
2. The Claimant states his case in a Memorandum of Claim dated 5<sup>th</sup> May 2023. The Respondent filed a Statement of Response dated 25<sup>th</sup> August 2023, to which the Claimant responded on 12<sup>th</sup> October 2023.
3. At the trial, the Claimant testified on his own behalf and the Respondent called three witnesses; Edna Dali Mwalenga, Alvin Nyangweso and Jackson Kimeu. Thereafter, the parties filed written submissions.

**The Claimant's Case**

4. The Claimant states that he was employed by the Respondent as a Finance Officer on 3<sup>rd</sup> November 2014, at an entry monthly salary of Kshs. 46,500 plus a house allowance of Kshs. 20,000 and a commuter allowance of Kshs. 13,000. He was confirmed in his appointment on 2<sup>nd</sup> May 2015.



5. The Claimant rose through the ranks to the position of Supervisor, Finance earning an enhanced monthly salary of Kshs. 170,000 effective 15<sup>th</sup> April 2021. In this capacity, the Claimant was issued with user login credentials into the Respondent's Simba (Customs) System.
6. On 28<sup>th</sup> April 2021, the Claimant was confronted with a search warrant at his office and house. He states that all his electronic devices were confiscated. He adds that after the search, he was moved from the revenue reporting section to the operations office.
7. By a letter dated 24<sup>th</sup> November 2021, the Claimant was interdicted on half salary, pending investigations into allegations of misconduct. He was subsequently issued with a show cause letter dated 17<sup>th</sup> March 2022 citing allegations of fraud/dishonesty, based on an investigation report dated 28<sup>th</sup> June 2021.
8. The show cause letter accused the Claimant of the following:
  - a. Using his Simba System credentials D05389 to fraudulently activate the Payment Module in the Simba System to indicate 'yes' (paid) for 43 entries in Table 1, which prompted the Declaration Management and Processing Module in Simba System to indicate that taxes for the stated 43 entries had been paid. Subsequently, the Document Processing Centre (DPC) passed the entries because the 'paid' icon indicated 'yes' for all the 43 entries whereas the subject entries had not been paid for, which was a clear case of fraud on the Claimant's part;
  - b. Fraudulently linking the 43 entries to previously paid F147S in Simba System to create an impression that taxes for the 43 entries had been paid for as indicated in Table 1, thus facilitating tax evasion and subsequent clearing of consignments. This was further evidenced by the fact that all the entries were still under 'registered' status in Common Cash Receipting System (CCRS) as at June 2021, meaning that they were never paid for, which was a clear case of dishonesty on the Claimant's part.
9. In his response to the show cause letter, the Claimant denied having used his Simba System login credentials to fraudulently activate the Payment Module for the 43 entries. He stated that his responsibilities did not include linking F147S and entries, adding that it was not possible to link F147S if the entry number did not correspond with the customs entry. He further requested for the forensic analysis report on his electronic devices confiscated by the Respondent.
10. The Claimant was invited to a disciplinary hearing on 6<sup>th</sup> July 2022, which he duly attended. He was subsequently dismissed by letter dated 28<sup>th</sup> July 2022 and his appeal against the dismissal was disallowed.
11. The Claimant's case is that his dismissal was wrongful and unfair; he therefore seeks an order of reinstatement without loss of benefits or in the alternative:
  - a. Kshs. 2,040,000 being 12 months' salary in compensation;
  - b. General and exemplary damages;
  - c. Certificate of service;
  - d. Costs plus interest.

### **The Respondent's Case**

12. In its Statement of Response dated 25<sup>th</sup> August 2023, the Respondent admits that the Claimant was its employee, as pleaded in the Memorandum of Claim.



13. The Respondent states that the Claimant was issued with login credentials into the Simba (Customs) System. The Respondent admits that as part of investigations, the Claimant's devices were seized but adds that they were all returned to him.
14. The Respondent maintains that the Claimant's dismissal was lawful and fair.

### **Finding and Determination**

15. There are two (2) issues for determination in this case:
  - a. Whether the Claimant's dismissal was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

### **The Dismissal**

16. The Claimant was dismissed by letter dated 28<sup>th</sup> July 2022 stating as follows:

“Dear Anthony,

RE: Summary Dismissal

Reference is made to the letter Ref: Conf/8776(14) dated 17<sup>th</sup> March 2022 that was addressed to you on Fraud/Dishonesty whose charges are well within your knowledge and your subsequent written and oral representations thereof.

Management has considered your representations on the case and found it unacceptable since it is confirmed that between June 2018 and September 2020, while working as an officer based at Revenue Reporting Section in Finance Division your Simba System credential D05839 was used to fraudulently activate the payment module in Simba System to indicate “YES” (paid) for forty three (43) Entries listed in your show cause letter reference here above. This therefore means that your credential was used to facilitate tax evasion and subsequent irregular clearance of the said consignment without payment of requisite taxes leading to revenue loss totalling to One Hundred Eighteen Million, Seven Forty Nine Thousand, Seven Hundred Ninety Five Kenya Shillings (Kshs. 118,749,795.00) as demonstrated here below:

1. That the above stated activation of the payment module prompted the Declaration Management and Processing Module in Simba System to indicate that taxes for the said forty three (43) Entries had been paid.  
  
Subsequently, the Document Processing Centre (DPC) passed the forty three Entries since the PAID icon indicated “YES” for all the forty three entries whereas the subject entries had not been paid which is a clear case of fraud/deception on your part.
2. That your credential D05839 was also used to fraudulently link the said Entries to previously paid F147S in Simba System to create an impression that taxes for the forty three Entries had been paid.
3. That all the 43 entries were still under “Registered” status in Common Cash Receipting System (CCRS) as at June 2021 meaning that they were never paid for which is a clear case of dishonesty on your part.



The above stated malpractice amount to serious offences of gross misconduct that warrant for your summary dismissal in line with Section 44.4 (c) (g) of the Employment Act 2007 as read with Clauses 6.1.2.2.1, 6.1.2.2.12, 6.1.2.2.14, 6.1.2.5.2, 6.1.2.6.12 and 6.2.4.7 of the KRA Code of Conduct.

Consequently, you are hereby summarily dismissed from the employment of Kenya Revenue Authority with effect from 27<sup>th</sup> July 2022 for committing the above stated malpractice.

You are hereby instructed to surrender any Authority's property that may have come into your possession by virtue of your employment including Staff Identification Card and Medical Smart Cards immediately you receive this letter.

You will be paid basic salary, house allowance and transport allowance up to and including 28<sup>th</sup> July 2022 as well as any withheld basic salary. You will also be paid pension benefits in line with the KRA Pension Scheme's Trust Deed and Rules upon production of Pension Commutation Form (PCF) and the Clearance Certificate. Further and pursuant to Section 27(5)&(6) of the Public Officer Ethics Act 2003, you will be required to complete and submit a final Declaration of Income, Assets and Liabilities form for the period from 1<sup>st</sup> November 2021 to 28<sup>th</sup> July 2022 for onward transmission to Public Service Commission of Kenya (declaration form attached). A Certificate of Service will be issued as provided for under Section 51(1) of the Employment Act, 2007 upon clearance.

Please take note that you have a right to appeal against this decision within thirty (30) days from the date of receipt of this letter in accordance with the provision of the KRA Code of Code of Conduct Clause 9.1.1.

Such an appeal should be addressed to the Commissioner, Corporate Support Services and should be forwarded through the Deputy Commissioner-Human Resource, Kenya Revenue Authority.

This letter is issued in duplicate, the dotted copy to be signed and returned to the undersigned for records.

Yours sincerely,

(signed)

Wilson Gaconi

For: Deputy Commissioner Human Resource”

17. The reason given for the Claimant's dismissal is fraud/dishonesty, particulars being that he had used and/or facilitated the use of his login credentials to manipulate the Respondent's Simba (Customs) System, leading to tax evasion in the sum of Kshs. 118,749,795.00.
18. In adjudicating a claim of unlawful and unfair termination of employment, the Court is required to determine two things; first, whether a valid reason for termination has been established and second, whether in effecting the termination, the employer has observed due procedure.
19. Regarding the reason for termination, Section 43 of the Employment Act provides as follows:



- 43.
- (1) In any claim arising out of termination of 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.
  - (2) The reason or reasons for termination of contract are the 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.
20. This provision mirrors what is commonly referred to as the ‘reasonable responses test’ whose contours were established by Lord Denning in *British Leyland v Swift* (1981) IRLR 91 in the following terms:
- “The correct test is; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employer may not have dismissed him.”
21. The ‘reasonable responses test’ is recapped in the Halsbury’s Laws of England, 4<sup>th</sup> Edition, Vol. 16(1B) para 642 as follows:
- “In adjudicating on the reasonableness of the employer’s conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach (the range of reasonable responses test) is that in many cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but if falls outside the band, it is unfair.”
22. It was common cause that the Claimant’s log in credentials were used in the manipulation of the Respondent’s Simba (Customs) System leading to massive loss through evasion of taxes. The Claimant did not offer any explanation as to how his credentials, which were issued to him personally, ended up being used in multiple devices over a considerable period of time.
23. Even if the Claimant’s averment that he did not participate in the fraud was to be believed, he failed to explain how his credentials were the ones used to perpetrate such a massive fraud, which denied the Kenyan public much needed income, through tax evasion.
24. In the circumstances of this case and applying the balance of probability standard of proof that is applicable in internal disciplinary proceedings, I have formed the opinion that the Respondent had a valid reason for dismissing the Claimant, as required under Section 43 of the *Employment Act*.
25. Regarding due process, Section 41 of the *Employment Act* requires the following:



41.

- (1) 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.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.

26. There is evidence that the Claimant was issued with a show cause letter to which he duly responded. Thereafter, he was invited to a disciplinary hearing, which he attended. The Claimant however complains of delay in the handling of his case. He further complains that he was not issued with the forensic report arising from an analysis of electronic devices confiscated from him.
27. I have considered the time taken by the Respondent to finalise the Claimant's case, within the context of the matter at hand, and have arrived at the conclusion that there was no unreasonable delay. Further, I have drawn the inference that the report arising from the forensic analysis of the electronic devices seized from the Claimant, was not a material piece of evidence in arriving at the decision to dismiss him.
28. Overall, I find that the Claimant was availed a fair opportunity to defend himself and the procedural fairness requirements of Section 41 of the Employment Act were therefore satisfied.

### **Final Orders**

29. Finally, I find and hold that the Claimant has failed to prove a case of wrongful dismissal. His entire claim therefore fails and is dismissed.
30. Each party will bear their own costs.
31. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Keiro for the Claimant

Ms. Chepsiror h/b for Mr. Chabala for the Respondent

