



**Hayombe v Kenya Water Institute (Cause E151 of 2022)  
[2025] KEELRC 488 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 488 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E151 OF 2022  
HS WASILWA, J  
FEBRUARY 20, 2025**

**BETWEEN**

**PROFESSOR PATRICK HAYOMBE ..... CLAIMANT**

**AND**

**KENYA WATER INSTITUTE ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this suit by a Memorandum of Claim dated 23<sup>rd</sup> January 2022, which was amended by a Memorandum of Claim dated 12<sup>th</sup> April 2022, seeking relief for unlawful, unfair, unprocedural termination and/or wrongful dismissal, unfair and unlawful labour practices, and failure and refusal by the Respondent to pay terminal dues as per the Employment Contract. The Claimant also prays for costs and interest. The Claimant, a Kenyan citizen residing in Nairobi, was employed as the Director/Chief Executive Officer of the Respondent under a contract dated 30<sup>th</sup> September 2020, earning a gross salary of Kshs 407,066/= . By the time of termination, he was earning Kshs 491,268/= . He asserts that he performed his duties diligently until his dismissal via a letter dated 3<sup>rd</sup> February 2022.
2. The Claimant states that on 26<sup>th</sup> November 2021, the Respondent accused him of conducting an irregular recruitment exercise, contrary to section 3.1.4 of the Human Resources Policy and Procedures Manual, and consequently sent him on compulsory leave for 30 days pursuant to paragraph 62(1) of Legal Notice No. 4 of the Public Service Commission Regulations dated 28<sup>th</sup> January 2020. On 20<sup>th</sup> December 2021, the Respondent informed him that an investigation had been completed following a report from a team appointed by the Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation.
3. The Respondent extended his compulsory leave for another 30 days from 26<sup>th</sup> December 2021 to allow for further investigations. On 13<sup>th</sup> January 2022, the Respondent invited him to a meeting scheduled for 19<sup>th</sup> January 2022 to discuss an audit report. The Claimant requested to be furnished with the audit report to prepare his defense but was never given the same.



4. On 2<sup>nd</sup> February 2022, the Claimant received an email from the Chairman of the Respondent's Governing Council inviting him to a meeting scheduled for 3<sup>rd</sup> January 2022 at 1000 hours. Attached was a letter dated 27<sup>th</sup> January 2022, containing allegations of gross misconduct, requiring him to respond by 3<sup>rd</sup> February 2022, showing cause why disciplinary action should not be taken against him. The Claimant responded on 2<sup>nd</sup> February 2022, stating that he had been away mourning his sister, requesting the audit report, seeking clarification on the date error in the email, asking for access to his office to retrieve documents essential to his defense, and requesting rescheduling of the meeting to allow sufficient time for preparation.
5. However, on 3<sup>rd</sup> February 2022, the Claimant received a termination letter, accused of desertion of duty and non-attendance of the disciplinary meeting. On 4<sup>th</sup> February 2022, he reiterated his previous response, asserting that the process was fundamentally flawed for want of procedural and substantive fairness.
6. The Claimant avers that the termination procedure was unfair and failed to meet the minimum statutory procedural standards of fairness under sections 41 and 45 of the Employment Act. He further claims that his dismissal was not based on valid reasons and was executed unfairly, violating his rights to fair administrative action and fair labour practices. He contends that the Respondent breached due process, rendering his termination unlawful, illegal, unprocedural, and unfair, contravening the Constitution of Kenya 2010, the Employment Act 2007, fair labour practices, and the principles of natural justice.
7. He maintains that he had done nothing to warrant such termination and that the investigation procedure was flawed as he was placed on compulsory leave for 60 days instead of the maximum 30 days as per paragraph 62(1) of Legal Notice No. 4 of the Public Service Commission Regulations. He also notes that the invitation to the meeting scheduled for 3<sup>rd</sup> January 2022 was sent via email on 2<sup>nd</sup> February 2022, suggesting that termination had been predetermined before the conclusion of investigations.
8. He further states that the show cause letter dated 27<sup>th</sup> January 2022 was served to him via email on 2<sup>nd</sup> February 2022, yet required him to respond by 3<sup>rd</sup> February 2022. He was not given sufficient time to prepare his defense, was not furnished with the audit report, and was denied access to his office to retrieve crucial documents for his defense, violating his right to access information under Article 35 of the Constitution.
9. As a result of the unlawful, unfair, unprocedural, and illegal termination, the Claimant claims that he has suffered abrupt loss of income and psychological distress and has been unable to meet his financial obligations, contrary to his legitimate expectation of continued employment or lawful termination. He prays for an order directing the Respondent to reinstate him to his former position unconditionally, without loss of benefits or seniority.
10. He avers that reinstatement is suitable as he has served the Respondent faithfully, meets the conditions under section 49(4) of the Employment Act, has a legitimate expectation of reinstatement, and remains within the three-year limit for reinstatement. Further, there have been no prior disputes between him and the Respondent, the matter could have been resolved amicably with adequate time for explanation, and his position has not been abolished.
11. In the alternative, the Claimant seeks full compensation for unfair, unlawful, and wrongful termination with all attendant benefits, including:
  - i. One-month payment in lieu of Notice – Kshs 491,268/=



- ii. House allowance (15% of Kshs 491,268/=) – Kshs 73,690.20/=
  - iii. Severance pay
  - iv. Compensation for unlawful and/or unfair termination and/or wrongful dismissal (20 months × Kshs 491,268/=) – Kshs 9,825,360/=
  - v. A certificate of service
  - vi. Interest
  - vii. Cost of the suit
12. The Claimant states that despite demand and notice of intention to sue, the Respondent has failed, ignored, or neglected to compensate him. He affirms that there is no other pending or concluded claim between him and the Respondent on the same subject matter. He asserts that this court has jurisdiction to hear and determine the matter.
  13. The Claimant prays for judgment against the Respondent for a declaration that his dismissal was unlawful, unfair, illegal, unprocedural, and actionable. He seeks an order directing the Respondent to reinstate him unconditionally or, alternatively, to fully compensate him as pleaded, along with interest, costs of the suit, and a certificate of service.
  14. The Claimant swore a verifying affidavit dated 12<sup>th</sup> April 2022, stating that he is an adult of sound mind, the Claimant in the matter, and fully conversant with the facts of the case. He confirmed that he had read and understood the contents of the Statement of Claim and swore the affidavit to verify its accuracy. He further affirmed that the information provided is true to the best of his knowledge, except where based on information and belief, whose sources and grounds have been disclosed.
  15. The Claimant filed a Witness Statement dated 23<sup>rd</sup> February 2022, stating that he is a male adult of sound mind and a Kenyan citizen residing in Nairobi. He was employed as the Director/Chief Executive Officer of Kenya Water Institute under a contract dated 30<sup>th</sup> September 2020, earning a gross salary of Kshs 407,066/=. During his employment, he performed his duties diligently and to his employer's satisfaction until his dismissal through a letter dated 3<sup>rd</sup> February 2022, at which time he was earning a gross salary of Kshs 491,286/=.
  16. On 26<sup>th</sup> November 2021, his employer accused him of violating section 3.1.4 of the Human Resources Policy and Procedures Manual by conducting an irregular recruitment exercise. He was subsequently placed on compulsory leave for 30 days to allow for investigations. On 20<sup>th</sup> December 2021, his employer informed him that investigations had been conducted and a report received from a team appointed by the Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation, and extended his compulsory leave for an additional 30 days from 26<sup>th</sup> December 2021 pursuant to paragraph 62(1) of Legal Notice No. 4 of the Public Service Commission Regulations dated 28<sup>th</sup> January 2020.
  17. On 13<sup>th</sup> January 2022, his employer informed him that investigations had been concluded, an audit report had been received, and invited him to a meeting scheduled for 19<sup>th</sup> January 2022 to discuss the findings. He attended the meeting and requested a copy of the audit report to enable him to adequately defend himself but was never furnished with it. On 2<sup>nd</sup> February 2022, he received an email from the Chairman of the Respondent's Governing Council inviting him to a meeting scheduled for 3<sup>rd</sup> January 2022. Attached to the email was a letter dated 27<sup>th</sup> January 2022 containing allegations of gross misconduct against him and requiring him to respond by 3<sup>rd</sup> February 2022, showing cause why disciplinary action should not be taken against him.



18. The email further stated that a driver had been sent to his home to serve him with the letter but had not found him. The Claimant stated that his sister had passed away on 20<sup>th</sup> January 2022, and during the period in question, he had been in mourning. He was not aware that the Respondent had sent a driver to his home. He further asserted that the Respondent had his mobile number and email address and, if genuinely interested in giving him a fair hearing, could have used these means in a timely manner.
19. Upon receipt of the email on 2<sup>nd</sup> February 2022, he responded promptly, informing the Respondent that he had been away mourning his sister and was therefore not at his Nairobi home when the driver allegedly attempted to serve him. He requested to be furnished with the full audit report to enable him to understand its contents and respond accordingly. He also sought clarification on whether the meeting date indicated in the email, 3<sup>rd</sup> January 2022, was correct. Additionally, he requested access to his office to retrieve crucial documents essential to his defense and asked for the meeting to be rescheduled due to the short notice, allowing him sufficient time to prepare.
20. However, on 3<sup>rd</sup> February 2022, he received a termination letter from the Respondent citing gross misconduct. Upon receipt, he wrote back on 4<sup>th</sup> February 2022, reiterating the contents of his response dated 2<sup>nd</sup> February 2022 and asserting that the process was fundamentally flawed for lack of procedural and substantive fairness.
21. The Claimant maintained that the termination procedure was unfair and did not adhere to the minimum statutory procedural standards of fairness under sections 41 and 45 of the *Employment Act*. He stated that his dismissal was not based on valid reasons and was executed unfairly. The disciplinary hearing process violated his right to fair administrative action and fair labour practices. The Respondent breached due process and procedure, rendering his termination unlawful, illegal, unprocedural, and unfair.
22. He further contended that the Respondent's actions contravened *the Constitution* of Kenya 2010, the *Employment Act* 2007, fair labour practices, and the principles of natural justice. As a result, he suffered loss of income and has been unable to meet his continuing financial obligations, contrary to his legitimate expectation of either continued employment or termination in accordance with the law.
23. The Claimant prays that the Honourable Court issues an order directing the Respondent to unconditionally reinstate him to employment and his former position without any loss of benefits or seniority and without any conditionality. In the alternative, and without prejudice to reinstatement, he seeks full compensation for unfair, unlawful, and wrongful termination and/or wrongful dismissal from employment, along with all attendant benefits as pleaded in his claim. His advocate sent a demand letter and notice to sue, but the Respondent ignored and/or refused to reinstate him or pay his terminal dues. He asserts that there is no other pending or concluded claim between the parties and that the Honourable Court has jurisdiction to hear and determine this dispute.

#### Claimant's Written Submissions

24. The Claimant filed written submissions dated 23<sup>rd</sup> December 2024, asserting that his summary dismissal by the Respondent was procedurally unfair and lacked valid reasons. It was undisputed that the Claimant was employed as the Director/Chief Executive Officer of Kenya Water Institute pursuant to a contract dated 30<sup>th</sup> September 2020, with a gross salary of Kshs. 491,268. On 26<sup>th</sup> November 2021, the Respondent accused the Claimant of conducting an irregular recruitment exercise contrary to section 3.1.4 of the Human Resource Policy and Procedures Manual. Consequently, he was sent on compulsory leave for 30 days under paragraph 62(1) of Kenya Gazette Supplement No. 4 (Legal Notice No. 3 of the Public Service Commission Regulations 2020) to allow for investigations.



25. On 20<sup>th</sup> December 2021, the Respondent informed the Claimant that an investigative report had been prepared by a team appointed by the Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation. However, the Claimant was not provided with a copy of the report, contrary to his right to access information. The Respondent extended the Claimant's compulsory leave by another 30 days, purporting to rely on Legal Notice No. 4 of PSC Regulations 2020. The Claimant contended that the governing council had no authority to extend his compulsory leave.
26. On 13<sup>th</sup> January 2022, the Respondent invited the Claimant for a meeting to discuss the audit report on 19<sup>th</sup> January 2022. The Claimant attended the meeting and requested a copy of the report, but it was not supplied. Subsequently, on 2<sup>nd</sup> February 2022, the Chairman of the Respondent's Governing Council sent the Claimant an email at 12:05 a.m., inviting him to a disciplinary meeting scheduled for 3<sup>rd</sup> January 2022 at 10:00 a.m. and attaching a show-cause letter dated 27<sup>th</sup> January 2022 containing allegations of gross misconduct.
27. The Claimant was required to respond to the show-cause letter and appear for the hearing at the same time. The Claimant, who had just received the email past midnight on 3<sup>rd</sup> February 2022, responded by explaining that he was bereaved and attending his sister's burial in Siaya. He requested the full audit report, clarification on the date of the meeting, access to his office to retrieve necessary documents, and an extension of time to prepare his defence. Despite this, on 3<sup>rd</sup> February 2022, the Claimant received a termination letter citing allegations including desertion and failure to attend the disciplinary meeting.
28. He responded on 4<sup>th</sup> February 2022, reiterating his concerns and terming the termination as unlawful and unfair. During the hearing, the Claimant testified and produced documentary evidence, including his contract of employment, salary details, leave letters, and correspondence with the Respondent. He stated that his role as CEO included heading the institution, overseeing training, research, examinations, and general operations. He asserted that the recruitment exercise in question was conducted within the approved budget and performance contract and was approved by the Governing Council and the Ministry.
29. He further stated that the disciplinary meeting scheduled for 19<sup>th</sup> January 2022 was a normal meeting to discuss the alleged irregular recruitment and that the audit report was never provided to him despite his requests. He did not attend the disciplinary hearing on 3<sup>rd</sup> February 2022 due to the short notice and his bereavement. On the issue of recruitment of 82 members of staff, he stated that it was an absorption process within the CEO's mandate and had been conducted through suitability interviews.
30. Regarding the termination of three employees, he maintained that the decision was made by the Governing Council and the Ministry, and he was merely implementing their resolutions. The Respondent's witness, Patrick Musili Mbangula, testified and produced various documents except for the audit report, which had never been supplied to the Claimant. He stated that the Claimant was summarily dismissed for gross misconduct following investigations into irregular recruitment.
31. However, he conceded during cross-examination that the Claimant was present at the 19<sup>th</sup> January 2022 meeting and had denied the allegations. He further admitted that the Governing Council did not seek approval from the Public Service Commission before sending the Claimant on compulsory leave, which exceeded the statutory limit of 30 days. He also confirmed that the Governing Council had no authority under the PSC Regulations to send the Claimant on compulsory leave or extend it.
32. On the allegation of desertion, he acknowledged that the Respondent did not report the Claimant's alleged absence to the Public Service Commission. The Claimant was still on extended compulsory leave and had never been recalled to work. On the claim that the Claimant earned two salaries, the Respondent failed to produce any documentary proof, and the Claimant provided evidence that he



had been granted a leave of absence without pay from Jaramogi Oginga Odinga University of Science and Technology.

33. The Respondent failed to provide evidence that the Claimant was supplied with the full audit report before the disciplinary proceedings. It was further admitted that the auditors did not consult the Claimant before preparing the report. The Respondent also confirmed that no officers had sworn affidavits or statements to substantiate the claim that they attempted to serve the Claimant with hard copies of the show-cause letter. Similarly, no evidence was provided to show that a text message had been sent to the Claimant regarding the disciplinary meeting.
34. Despite the Claimant requesting necessary documents for his defence, they were never supplied. The Claimant relied on the case of *Isaac Matongo Mogoi v. Municipal Council of Nakuru & Another* (HC Misc. Case No. 810 of 2005), which held that an employee facing disciplinary action must be given adequate opportunity to respond to the charges against them. The right to see the evidence against an accused person is fundamental to a fair disciplinary process. It was only after a notice to produce documents was issued that the Respondent's counsel supplied some of the requested documents.
35. The Claimant further submitted that his termination on 3<sup>rd</sup> February 2022 was unfair and unlawful, as he was not accorded a fair hearing. He argued that under Sections 41, 43, 45, and 47(5) of the *Employment Act*, 2007, termination must be based on valid and fair reasons and follow due procedure. Section 45(2) provides that a termination is unfair if the employer fails to prove the validity of the reason, its fairness in relation to the employee's conduct, capacity, or operational requirements, and compliance with fair procedure. Section 41(1) requires an employer to explain the grounds for termination to the employee in a language they understand and allow them representation. Section 41(2) further mandates that before termination or summary dismissal under Section 44(3) or (4), the employer must hear and consider any representations by the employee. Section 43(1) obligates the employer to prove the reason for termination, failing which it is deemed unfair under Section 45. Section 47(5) places the burden on the employee to prove unfair termination while requiring the employer to justify it.
36. The Claimant contended that the disciplinary process was a sham, designed to rubberstamp a premeditated decision to dismiss him. He was not supplied with the audit report forming the basis of the allegations, contrary to the principles outlined in *Jane Nalonja Rutto v New Kenya Cooperative Creameries Limited* [2022] eKLR. Additionally, he was not given adequate time to prepare his defense. Though the show cause letter was dated 27<sup>th</sup> January 2022, he received it via email at 12:05 a.m. on 2<sup>nd</sup> February 2022, with a response deadline and disciplinary hearing scheduled for 10:00 a.m. on 3<sup>rd</sup> February 2022. This left him with only 33 hours - 10 of which were official working hours—to prepare.
37. He cited *Margaret Auma Ingwa v Kenya Power Lighting Co. Ltd* [2015] eKLR and *Joseph Nyandiko Nyanchama v Pipeline Company Limited* [2019] eKLR, arguing that an employee must be granted sufficient time to prepare a defense. The Claimant emphasized that courts have found a day's notice or less to be inadequate, as held in *Kiilu v Isinya Resorts Limited* (Cause E022 of 2021) [2022] KEELRC 13240 (KLR) and *Omenda v Gurudumu Sacco Society Limited* (Cause 2588 of 2016) [2023] KEELRC 727 (KLR). He further submitted that he had requested an extension on 2<sup>nd</sup> February 2022, which was not unreasonable, as recognized in *Irene Chesang v Human Resource Advisory Committee, Rural Electrification Authority & Another* [2018] eKLR.
38. The Claimant justified his failure to attend the disciplinary hearing, stating that he had been placed on an unprocedural compulsory leave, arbitrarily extended, barring him from accessing necessary documents. He was also in Siaya, grieving the loss of his sister, and unable to effectively respond to multiple allegations without adequate preparation. He relied on *Josephat Alusiola Musambayi v*



- Vihiga County Assembly & Vihiga County Assembly Service Board [2016] KEELRC 97 (KLR), urging the court to find that the disciplinary process was procedurally unfair.
39. Regarding substantive justification, the Claimant submitted that the Respondent failed to prove valid reasons for his termination, as required under Sections 43 and 45 of the *Employment Act*. He argued that the allegations in the show-cause letter were unsubstantiated. The first set of allegations—concerning violation of recruitment procedures—lacked evidence to rebut his claim that staff absorptions were approved by the Governing Council. On failure to observe ethnic balancing under Part III, Section 7(2) of the *National Cohesion and Integration Act*, the Respondent did not provide records proving the ethnic composition of the recruited staff.
  40. The Claimant also denied allegations of insubordination and giving false information, maintaining that staff absorptions and cancellations were approved by the Governing Council and the Ministry of Water, Sanitation, and Irrigation, and the Respondent failed to produce any letter from the Ministry raising concerns. Further, no evidence was provided to substantiate the claim that he failed to perform lawful duties, as no documents were presented to show that he did not attend meetings or engage in negotiations.
  41. On the allegations that he appointed himself to head a task force and failed to appoint a Human Resource Advisory Committee, the Claimant referred to an internal memo dated 8<sup>th</sup> March 2021 from Kennedy Riaga, Deputy Director, Corporate Services, showing that he had been recommended to the task force. The Respondent also failed to prove that he was employed by another organization, having neither sought confirmation from Jaramogi Oginga Odinga University of Science and Technology nor produced any salary records. The Claimant cited Sections 107, 108, and 109 of the *Evidence Act*, which place the burden of proof on the party making an allegation, and submitted that the Respondent had failed to discharge this burden.
  42. Relying on *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, the Claimant reiterated that the *Employment Act* places stringent obligations on employers to prove the reasons for termination, their validity, and fairness. He also cited *Njuguna v K-Unity Savings & Credit Co-operative* [2023] KEELRC 2984 (KLR), asserting that the Respondent did not produce any records or audit reports to justify the allegations.
  43. The Claimant sought reliefs under Section 49 of the *Employment Act*, including one month's pay in lieu of notice (Kshs. 491,268), unpaid house allowance (Kshs. 73,690.20), and compensation for unlawful termination amounting to 12 months' salary (Kshs. 9,825,360). He also sought costs, arguing that they should follow the event as he was the successful party. In conclusion, the Claimant submitted that the Respondent had failed to prove both substantive and procedural fairness under Sections 41, 43, 45, and 47(5) of the Act, and therefore, his summary dismissal on 3rd February 2022 was unfair and unlawful. He urged the court to allow the claim with costs.

### **Respondent's Case**

44. The Respondent filed a Reply to the Memorandum of Claim dated 21<sup>st</sup> April 2022, stating that the Claimant was employed on 1<sup>st</sup> October 2020 on a three-year contract with a clear mandate as per his letter of appointment. The Respondent asserted that the Governing Council discovered that the Claimant, then the Chief Executive Officer of the Kenya Water Institute, had conducted an irregular recruitment without the Council's approval or consent. Acting on this information, the Governing Council placed the Claimant on compulsory leave for 30 days on 26<sup>th</sup> November 2021 to facilitate investigations, which was extended on 20<sup>th</sup> December 2021 due to the ongoing nature of the inquiry.



45. Upon concluding investigations on 15<sup>th</sup> December 2021, the Council found that the Claimant had irregularly recruited 82 staff members without approval, in contravention of section 6(2)(e) of the [Kenya Water Institute Act](#) and clause 3.1.4 of the Human Resource Policy and Procedure Manual. There was no internal or external advertisement, and no approval had been sought for the recruitments.
46. The Respondent further stated that the Claimant, who was expected to resume work on 27<sup>th</sup> January 2022, failed to report and remained absent. Officers sent to deliver a letter from the Governing Council to his residence found that the Claimant was at home but refused to open the door. Additionally, the acting Chief Executive Officer sent the Claimant an SMS on 28<sup>th</sup> January 2022, inquiring where the letter should be delivered, but the Claimant did not respond.
47. It was also established that between 10<sup>th</sup> October 2020 and 1<sup>st</sup> July 2021, the Claimant received a second salary from Jaramogi Oginga Odinga University of Science and Technology, a public institution, while employed at Kenya Water Institute, contrary to the Public Service Commission Regulations 2020. The act of drawing a double salary, according to the Respondent, amounted to a serious criminal offense, and the Governing Council was pursuing the matter with investigative agencies for violating the [Leadership and Integrity Act](#).
48. The Respondent stated that after establishing that the Claimant had conducted an irregular recruitment without the Council's consent, he was invited for a meeting at the Institute campus via a letter dated 13<sup>th</sup> January 2022, which outlined the allegations against him. The Claimant, however, failed to attend the meeting, leading to his summary dismissal from service on 3<sup>rd</sup> February 2022.
49. The Respondent maintained that the termination was substantively and procedurally fair as the Claimant was placed on leave, investigations were conducted, a report was prepared, and the Claimant was given an opportunity to defend himself, which he declined. Citing section 44(3) of the [Employment Act](#), the Respondent asserted that the Claimant had fundamentally breached his contractual obligations, justifying summary dismissal. The Claimant's misconduct, particularly his unauthorized recruitment, was deemed a breach of trust and confidence, negating any claim for compensation. The Respondent concluded that the Claimant had not satisfied the legal conditions to warrant the Court's discretion in his favour and that his claims lacked legal basis or merit. The Respondent prayed for the dismissal of the Memorandum of Claim with costs, terming it an abuse of court process.
50. The Respondent filed a Witness Statement dated 4<sup>th</sup> September 2024, stating that the deponent is the Chairman of the Governing Council at Kenya Water Institute and is authorized to make the statement. The Claimant was employed on 1<sup>st</sup> October 2020 on a three-year contract with terms outlined in his letter of appointment. The Governing Council became aware that the Claimant, as the Director/Chief Executive Officer of Kenya Water Institute, had conducted an irregular recruitment exercise without the approval or consent of the Governing Council and without concurrence from the National Treasury.
51. Acting on this information, the Governing Council placed the Claimant on compulsory leave for 30 days starting on 26<sup>th</sup> November 2021 to facilitate a comprehensive investigation. On 20<sup>th</sup> December 2021, the Council extended the compulsory leave, as the investigation had not been concluded. Following the investigation on 15<sup>th</sup> December 2021, the Governing Council established that the Claimant had engaged in serious misconduct. A total of eighty-two new staff members had been irregularly recruited without the approval of the Governing Council, contrary to section 6(2)(e) of the [Kenya Water Institute Act](#) No. 11 of 2001, read together with section 3.1.4 of the Human Resource Policy and Procedures Manual, May 2008.



52. No internal or external advertisements had been made for the recruitment, and there was no approval from the Governing Council. Further, there was no evidence that the 82 recruits had applied for the positions. The investigation team found no indication of a competitive recruitment process based on merit, contrary to Article 232 of *the Constitution* of Kenya, 2010, which requires competitiveness and merit in public service appointments. The Claimant did not at any point inform the Governing Council of the recruitments, nor was there any approval sought. Among the 82 irregular recruitments, 48 individuals were hired on permanent and pensionable terms, 20 on three-year contracts, and 14 on one-year contracts.
53. The audit report further established that no letter had been sought from the National Treasury and Public Service Authority for the recruitment. Additionally, the Kenya Water Institute, under the Claimant's tenure as Chief Executive Officer, defaulted on the payment of the annual license for the 2020/2021 financial year, leading to the vendor denying the institution certain rights. Under section 6(2)(e) of the *Kenya Water Institute Act* No. 11 of 2001, it is the mandate of the Governing Council to appoint suitable academic staff for the institute upon such terms and conditions as it may determine. Section 3.1.4 of the Kenya Water Institute Human Resource Policy and Procedures Manual, May 2008, states that all appointments must be made with the approval of the Council and within the approved staff establishment.
54. Any employment initiated and conducted by the Chief Executive Officer or any other person without consulting the Board is null and void, as it amounts to insubordination and gross misconduct under the law. Despite being aware of these legal provisions, the Claimant, between July and November 2021, recruited 82 staff members irregularly without the approval of the Governing Council, contrary to section 6(2)(e) of the *Kenya Water Institute Act* No. 11 of 2001 and section 3.1.4 of the Human Resource Policy and Procedures Manual, May 2008.
55. The Claimant was required to report to work on 27th January 2022 but intentionally failed to do so. The institution sent two officers to his Nairobi residence to deliver a letter from the Governing Council, but he refused to open the door despite being inside. On 28<sup>th</sup> January 2022, the Acting Chief Executive Officer sent an SMS to the Claimant's phone, informing him that there was a letter for delivery and asking for a suitable delivery location, but the Claimant never responded.
56. The investigation further established that the Claimant had been receiving a second salary from Jaramogi Oginga Odinga University of Science and Technology, a public university, for eight months from 10<sup>th</sup> October 2020 to 1<sup>st</sup> July 2021 while concurrently employed at Kenya Water Institute. This act contravened the provisions of the Public Service Commission Regulations, 2010. Drawing a double salary constituted a serious criminal offense and raised integrity concerns under the *Leadership and Integrity Act*. The Governing Council, after conducting due diligence and reviewing the available evidence, found that the Claimant had engaged in irregular recruitment without the Council's consent and contrary to the law.
57. On 13<sup>th</sup> January 2022, the Council invited the Claimant to a meeting scheduled for 19<sup>th</sup> January 2022 at the Institute's head office. The Claimant failed to attend a second meeting scheduled for 3<sup>rd</sup> February 2022, which he had been invited to through a letter dated 27<sup>th</sup> January 2022. The invitation letter clearly outlined the allegations against him. Despite being given an opportunity to appear before the Governing Council to defend himself against the allegations of serious misconduct, the Claimant intentionally failed to do so. As a result, the Council summarily dismissed him from service on 3<sup>rd</sup> February 2022.



58. The termination procedure was substantively and procedurally fair. The Claimant had been placed on mandatory leave, an investigation was carried out by the Governing Council, an investigation report was prepared, and the Claimant was invited to defend himself before the Governing Council, which he failed to do. Under section 44(3) of the Employment Act, an employer can summarily dismiss an employee if the employee's conduct indicates that they have fundamentally breached their contractual obligations. The fundamental breach committed by the Claimant and the gross misconduct under the Employment Act warranted summary dismissal without any compensation.
59. The Claimant's actions, particularly conducting irregular recruitment without the Governing Council's consent or approval, undermined the mutual trust and confidence between him as an employee and Kenya Water Institute as his employer. Dismissal under breach of trust and confidence under employment law does not attract any claim for compensation. The Claimant has neither satisfied the legal conditions for the Honourable Court to exercise discretion in his favour nor proved the grounds relied upon in his prayers to warrant the orders sought. The Respondent affirms that the contents of the statement are true to the best of their knowledge, information, and belief. This is all they wish to state.

### **Claimant's Response to the Respondent's Reply to the Memorandum of Claim**

60. The Claimant filed a response to the reply to the Memorandum of Claim dated 12<sup>th</sup> May 2022, joining issue with the Respondent on its defence except where specifically admitted. The Claimant denied the allegations in paragraphs 2 to 22 of the Respondent's reply dated 21<sup>st</sup> April 2022 and put the Respondent to strict proof. The Claimant specifically denied assertions in paragraphs 2 and 3 that he secretly conducted an irregular recruitment without the Governing Council's approval, asserting that the vacancies filled were within the Respondent's knowledge.
61. He relied on the Human Resource Policy and Procedure Manual, May 2018, which declared all vacancies filled through the 2021 recruitment, the Strategic Plan 2021-2027, the Performance Contract 2020-2021, and the approved Budget 2021-2022. The Ministry of Water, Sanitation and Irrigation also approved the decision to fill the vacancies through a letter dated 25<sup>th</sup> October 2021.
62. The Claimant denied the allegations in paragraph 4 that 82 new staff were irregularly recruited, stating that the recruitment was authorized by the Governing Council and that most recruits had been employed before his tenure. He further averred that the recruitment process was conducted through suitability interviews led by a Human Resource Taskforce from the State Department of Public Service, Gender and Youth, in collaboration with the Governing Council and the Ministry of Water, Sanitation and Irrigation.
63. The Governing Council, through its Human Resource Committee, approved the absorption of temporary staff into permanent and pensionable service. The Claimant denied allegations in paragraph 4 that he engaged in nepotism, terming them baseless and meant to tarnish his reputation in violation of Article 10 of the Constitution of Kenya, 2010.
64. Regarding paragraphs 5 to 8 of the reply, the Claimant contended that the Ministry of Water forwarded the Human Resource Taskforce reports for implementation. The Governing Council approved the Performance Contract 2020/2021 on 29<sup>th</sup> September 2020, which was submitted to the Performance Contract Vetting Team on 4<sup>th</sup> November 2021, showing that the absorption of 48 staff was transparent and duly approved.
65. The Claimant denied the allegations in paragraph 9 that he intentionally failed to report to work on 27<sup>th</sup> January 2022. He cited paragraph 62(1) of Legal Notice No. 4 of the Public Service Commission



- Regulations, 28<sup>th</sup> January 2020, which was invoked by the Respondent to send him on compulsory leave for 30 days from 26<sup>th</sup> November 2021 for investigations, later extended by another 30 days from 26<sup>th</sup> December 2021. He asserted that the total 60-day compulsory leave exceeded the 30-day limit under the Public Service Commission Regulations. He further denied claims that he refused to open his house to officers sent by the Respondent, stating that he was away attending his sister's burial in Siaya at the time.
66. In response to paragraph 10, the Claimant denied receiving an SMS from the Respondent, arguing that official communication had previously been sent via email and that SMS was not an official mode of communication. He also denied in paragraphs 11 and 12 that he was on two payrolls, asserting that he was on a nine-month sabbatical leave from Jaramogi Oginga Odinga University of Science and Technology. Upon expiry, the university granted him leave of absence without pay for two and a half years to serve his three-year contract with the Respondent, making the allegations of flouting the law false and malicious.
67. The Claimant refuted paragraph 13 of the reply, stating that the disciplinary hearing letter dated 13<sup>th</sup> January 2022 was vague and did not outline the allegations against him. The Governing Council withheld the audit report yet expected him to defend himself against allegations therein. He further asserted that he was only served with a show cause letter via email on 2<sup>nd</sup> February 2022, outlining eleven allegations, and was required to respond by 3<sup>rd</sup> February 2022, allowing him less than 24 hours to prepare a defence and travel to Nairobi for the hearing. He argued that this timeframe was unrealistic and impracticable. Despite this, he promptly informed the Respondent that he was out of Nairobi and unable to attend due to the short notice.
68. The Claimant denied paragraphs 16, 17, and 18, asserting that none of his actions warranted summary dismissal under Section 44(3) of the *Employment Act*. He also denied paragraphs 19 to 22, maintaining that he met all legal conditions for the court to exercise discretion in his favour. He claimed that the Respondent violated his constitutional rights in several ways, including conducting a disciplinary process with malice and bias, failing to adequately inform him of the charges contrary to Article 50 of *the Constitution* and Section 4(3)(a) of the *Fair Administrative Action Act*, 2015, and contravening his right to fair labour practices under Article 41 of *the Constitution*.
69. He further argued that the Respondent failed to provide him with documentary evidence relied upon in the disciplinary proceedings, contrary to Articles 35 and 50 of *the Constitution* and Section 4(3)(g) of the *Fair Administrative Action Act*, 2015. He was also ambushed to attend the hearing without adequate time to prepare, violating Article 47 of *the Constitution*. The entire process was unfair, unreasonable, and in breach of Article 47 of *the Constitution* and Section 4(1) of the *Fair Administrative Action Act*, 2015.
70. The Claimant maintained that his termination was flawed in both procedure and substance. He denied all allegations in the counterclaim and reiterated his position, urging the court to dismiss the Respondent's reply and enter judgment in his favour as prayed in his claim.

### **Respondent's Written Submissions**

71. The Respondent filed written submissions dated 16<sup>th</sup> January 2025, opposing the Claimant's memorandum of claim dated 23<sup>rd</sup> February 2022. The Claimant was employed on 1<sup>st</sup> October 2020 on a three-year contract by the Kenya Water Institute (KEWI) as Director/Chief Executive Officer. The Governing Council found that the Claimant had conducted an irregular recruitment process without approval from the Council, the Ministry of Water, Sanitation and Irrigation, the National Treasury, or the Head of Public Service.



72. An audit conducted between 7<sup>th</sup> and 15<sup>th</sup> December 2021 established that the Claimant had engaged in gross violations of recruitment procedures outlined in Section 3.1.4 of the Human Resource Policy and Procedures Manual, appointing 82 staff members irregularly. Additionally, the Claimant was found to have turned a proposed absorption of long-serving staff into permanent and pensionable positions into an irregular fresh recruitment exercise, failing to observe ethnic balancing as required by Part III Section 7(2) of the *National Cohesion and Integration Act*.
73. He was also accused of insubordination by revoking the contracts of three officers—Paul Muthama, David Ngetich, and Silas Olang’o—without the Governing Council’s approval, providing false information to the Permanent Secretary and Cabinet Secretary regarding contract extensions, and failing to settle a court case as directed by the Governing Council. The Claimant further appointed himself as the head of a task force, failed to constitute a Human Resource Advisory Committee contrary to Section 3.8 of the Human Resource Policy, and advertised positions without the approval of the Governing Council.
74. Additionally, it was established that he was concurrently employed by KEWI and Jaramogi Oginga Odinga University between 10<sup>th</sup> October 2020 and 1<sup>st</sup> July 2021, drawing salaries from both institutions. The Claimant failed to report to work on 27<sup>th</sup> January 2022, refused to receive official communication, and did not attend a meeting scheduled for 3<sup>rd</sup> February 2022 to respond to the allegations, leading to his summary dismissal on the same day. The Claimant subsequently filed a suit alleging unlawful, unfair, unprocedural, and wrongful termination.
75. The Respondent submitted that the dismissal was procedurally and substantively fair. Relying on the case of David Gichana Omuya v Mombasa Maize Millers Limited [2014] eKLR, the Respondent argued that Section 41 of the *Employment Act* requires an employer to notify an employee of termination reasons in a language they understand and allow them an opportunity to be heard. The Claimant was invited to respond to the allegations through a letter dated 27<sup>th</sup> January 2022 but refused to receive it and failed to attend the scheduled hearing.
76. The Claimant’s conduct amounted to gross misconduct under the *Employment Act*, 2007. His neglect of duty, as outlined under Section 44(4)(c), was demonstrated by his failure to implement directives from the Governing Council, leading to unnecessary litigation costs. He also failed to obey lawful commands under Section 44(4)(e) by unilaterally revoking contract extensions granted by the Council. His actions further amounted to conduct detrimental to the employer under Section 44(4)(g), as his recruitment irregularities exposed KEWI to financial and legal risks. The Respondent cited Benjamin Maundu Syanda v Telkom Kenya Limited [2020] eKLR, where the court upheld summary dismissal for failure to obey instructions, respond to work notices, and attend disciplinary hearings.
77. The Respondent opposed the Claimant’s request for reinstatement, arguing that the employment relationship had irretrievably broken down. Citing Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR, the Respondent emphasized that reinstatement is discretionary and not automatic, requiring a conducive working relationship, which was absent in this case. The Respondent also opposed the Claimant’s claim for compensation, asserting that his termination was lawful and in compliance with Section 44(1) of the *Employment Act*, which allows summary dismissal for gross misconduct.
78. The Respondent relied on The Postal Corporation of Kenya v Andrew K. Tanui [2015] eKLR, where the court held that compensatory damages should not be awarded where termination is justified. The Respondent, therefore, urged the court to dismiss the Claimant’s claims in their entirety and uphold the decision to summarily dismiss him.



79. I have examined all the evidence and submissions of the parties herein. The issues for this courts determination are as follows:

1. Whether there were valid reasons to warrant the claimant's termination.
2. Whether due process was followed
3. Whether the claimant is entitled to the remedies sought.

80. The claimant was terminated vide a letter dated 3<sup>rd</sup> February 2022 which letter stated as follows:

KEWI/ORG/1/19 VOL II

3rd February, 2022

Prof. Patrick O. Hayombe

Director/Chief Executive Officer

Kenya Water Institute

PO Box 60013-00200

Nairobi

Dear Patrick,

Re: Termination Of Employment Contract

Your letter dated 2nd February 2022 refers.

Please note the facts of the matter as below:

1. Your extended compulsory leave expired on 26th January 2022 and you were therefore expected back to work on 27th January 2022. To-date you have not reported and remain absent from work, which amounts to desertion from duty.
2. Your attempts to give the excuse that you were away from Nairobi due to some family commitments, yet you did not apply for any leave to be away from work, hold no substance.
3. On falling to report back to work on 27th January 2022, two officers from KEWI were sent to your house in Nairobi to deliver a letter from the Governing Council. All indications are that you were locked up inside the house but refused to open the door to receive the letter.
4. Following the visit to your house on 27th January 2022, the Acting Director/ CEO sent a short message service (SMS) to your phone on 28th January 2022 to advise you that a letter for your attention was awaiting delivery to you, and asked you to advise where and how it could be delivered to you. To-date you have ignored to reply to that message.
5. The undersigned thereafter sent you a WhatsApp message to your phone on 1st February 2022 to remind you that you had refused to be served with a letter from the Governing Council. This was further reiterated by an email again from the Chairman on 2nd February 2022, forwarding the show cause letter dated 27 January 2022 which you had consistently refused to be served



with, and which required your response within seven (7) days and appearance in person before the Governing Council on 3rd February 2022 to respond to the issues raised against you. This was to be a second appearance before the Governing Council in addition to the previous hearing you were granted on 19th January 2022. You replied to this letter on the same day with spurious reasons as to why you considered the notice to be too short, despite the above chronology of events, and failed to appear before the Governing Council on 3rd February 2022 where you could have argued your case.

6. Considering the above sequence of events and the show cause letter ref. no. KEWI/ORG/1/19 VOL II dated 27<sup>th</sup> January 2022, the Governing Council during its meeting of 3rd February 2022 deliberated on the issues raised against you and resolved that your actions amount to gross misconduct.

Consequently, the Governing Council hereby terminates your employment contract in accordance with clause 5 of your employment contract

This termination takes effect immediately and you will be entitled to any dues and benefits that may accrue to you as at the date of termination supposing successful clearance from the Institute.

Please make necessary arrangements to hand over officially to the Deputy Director Corporate Services who will assume the office of the Director of the Institute in an acting capacity.

The Governing Council wishes you every success in your future endeavours.

Yours

Big. (Rtd) Stephen Njunge Kihu EBS

Chairman, Kenya Water Institute Governing Council

cc Cabinet Secretary

Ministry of water, Sanitation & Irrigation

Maji House

Nairobi

81. From the above letter, the respondent's contention was that the claimant had absconded duty from 27<sup>th</sup> January 2022 and was terminated under clause 5 of the employment contract which clause states as follows:

“The duration contract of employment will be for three (3) years with immediate effect but not less than 1<sup>st</sup> October 2020 and the governing council reserves the right to terminate the contract prematurely depending on your performance.”

82. The reasons as discussed from the above letter are two fold:

1. Absconding duty
2. Non performance

83. The claimant had previously been served with a letter of 26<sup>th</sup> November 2021 sending him on compulsory leave for 30 days pending investigation into some matters of some irregular recruitment



exercise. The compulsory leave was again extended vide a letter of 20<sup>th</sup> December 2021 for a further 30 days which presumably means that the leave was then to end on 20<sup>th</sup> January 2022.

84. According to the termination letter, the respondents indicated that the leave ended on 26<sup>th</sup> January and so he was expected to be back in office on 27<sup>th</sup> January 2022 which he failed to do. According to the claimant while still on leave, he was invited to a meeting on 13<sup>th</sup> January 2022 to discuss an audit report on 19<sup>th</sup> January 2022 starting at 9 am. He avers that he attended the said meeting and requested for a copy of the audit report to enable him adequately defend himself but this was not given to him.
85. The respondents aver that the claimant failed to attend the meeting of 13<sup>th</sup> January 2022 and this is what made them to summarily dismiss him.
86. Having considered these events, the issue of absconding duty fails to be captured by the respondents who in their defence para 13 only indicate that the claimant did not attend the meeting he was invited to on 13<sup>th</sup> January 2022 which time he was still on compulsory leave. The issue of absconding duty does not therefore arise.
87. The issue of clause 5 of the claimant's contract refers to termination depending on performance. It is however not clear what the claimant performed or did not perform in his capacity as CEO. The reason for the termination based on clause 5 remain vague.
88. It is clear that the respondents were investigating other acts of omission or misconduct against the claimant. The issues were not brought out in the termination letter and therefore it is true they did not inform his termination. That being said and done, the reason for termination must be established as envisaged under section 43 of the *Employment Act* 2007 which states as follows:
- (1) In any claim arising out of termination 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
89. These reasons were however not established as they were not subjected to any hearing. It is therefore my finding that there were no valid reasons established to warrant the claimant's termination.

## **Issue No 2 Due Process**

90. In terms of due process, the respondents have averred that they invited the claimant for a meeting on 19/1/2022 and he failed to attend and so he was dismissed after this. It is however clear that on 2/2/2022 the respondents invited the claimant for a disciplinary hearing scheduled for 3/2/2022. The claimant avers that his sister had passed away on 20/1/2022 and he had been home during the funeral.
91. Upon receipt of the email on 2/2/22, he responded promptly informing the respondent that he could not make it to Nairobi on 3/2/22 for the hearing. He also requested for some documents including a full audit report to enable him understand the contents and respond accordingly. It was also true that the email indicated the meeting was to be on 3/2/22 and asked for a clarification. He also requested to access his office to retrieve essential documents to enable him defend himself and sought for the rescheduling of the meeting due to the short time involved. The letter by the claimant dated 2/2/2022 was responded to vide that of 3/2/2022 terminating his services.
92. Section 4(3) and (4) of the *Fair Administrative Action Act* provides as follows:
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–



- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
  - (b) an opportunity to be heard and to make representations in that regard;
  - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - (d) a statement of reasons pursuant to section 6;
  - (e) notice of the right to legal representation, where applicable;
  - (f) notice of the right to cross-examine or where applicable; or
  - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to—
- (a) attend proceedings, in person or in the company of an expert of his choice;
  - (b) be heard;
  - (c) cross-examine persons who give adverse evidence against him; and
  - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
93. The law is clear that where an administrative action is likely to affect rights and freedoms of a person process and adequate notice must be given including provision of all documents to be relied upon and also be allowed an adjournment if requested.
94. In the case of the claimant, all these concerns were not addressed. Section 41 of the *Employment Act* 2007 also states as follows:
- 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.
95. In terms of the claimant’s case, he was denied this right and his attempt to request for documents and even an adjournment was rejected. It is therefore my finding that the claimant’s right to a fair hearing was denied and therefore there was no due process.
96. Section 45(2) of the *Employment Act* states as follows:
- (2) A termination of employment by an employer is unfair if the employer fails to prove—
    - a. that the reason for the termination is valid;
    - b. that the reason for the termination is a fair reason—
      - i. related to the employees conduct, capacity or compatibility; or



ii. based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.

97. Having found that there was no due process and that no valid reason existed to warrant dismissal, it follows that the termination of the claimant was unfair and unjustified.

### **Issue No 3 Remedies**

98. Having considered the prayers sought, I find for the claimant and I award him as follows:

1. 1 month salary in lieu of notice = kshs 491,268/-
2. Compensation for unlawful termination and given the injustice of not being heard, I find 8 months compensation adequate = 8x 491,268/- Total = Kshs 4,421,412/- less statutory deductions.
3. The respondents will pay costs of this suit plus interest at court rates w.e.f the date of this judgment.\

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**HELLEN WASILWA**

**JUDGE**

