



REPUBLIC OF KENYA



KENYA LAW
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**Muema v Kenya Post Office Savings Bank (Cause 1469 of 2018)
[2025] KEELRC 959 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 959 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1469 OF 2018
S RADIDO, J
MARCH 27, 2025**

BETWEEN

STEPHEN MUEMA CLAIMANT

AND

KENYA POST OFFICE SAVINGS BANK RESPONDENT

JUDGMENT

1. Stephen Muema (the Claimant) sued Kenya Post Office Savings Bank (the Respondent) on 25 October 2018, and he set out the Issues in Dispute as:
 - i. Unfair and unlawful termination of the Claimant's employment.
 - ii. Discrimination.
2. The remedies sought by the Claimant were:
 - i. A declaration that the purported interdiction as contained in the internal memo dated the 1st September 2015, notice to show cause contained in the internal memo dated 11th June 2015, the purported hearing conducted on the 19th October 2015 and the dismissal contained in the internal memo dated the 2nd March 2016 were unlawful and that the Claimant is entitled to the prayers sought herein.
 - ii. A declaration that the reasons stated in the termination letter do not constitute proper grounds for termination.
 - iii. The Respondent withdraw the letter of termination and issue the Claimant a letter clearing him of any wrongdoing.



- iv. An order directing that the Respondent does unconditionally reinstate the Claimant to his employment and in his former position with the Respondent without any loss of benefits and seniority as provided under section 49 of the *Employment Act*.
 - v. A declaration that the Claimant was discriminated against.
 - vi. Costs of the Claim and any other order the Court may find fit to award.
3. The Respondent filed a Response on 7 October 2022, and the Cause was heard on 28 October 2024 and 10 February 2025. The Claimant, and an acting Head of Human Resources and an acting Procurement Manager with the Respondent testified.
 4. The Claimant filed his submissions on 13 March 2025 (should have been filed and served before 21 February 2025) and the Respondent on 14 March 2025.
 5. The Court has considered the pleadings, evidence and submissions.

Unfair/unlawful interdiction

6. The Claimant contended that the Respondent placed him on interdiction without reasonable justification.
7. The Respondent sent the Claimant on interdiction on 1 September 2015, and the reason given was to facilitate investigations into allegations touching on the Claimant.
8. Part X of the Respondent's Code of Conduct provided for interdiction to enable investigations.
9. Since the Claimant's interdiction had a contractual basis and a reason was given, the Court finds that the interdiction was lawful.

Unfair/unlawful show cause

10. Sections 35(1) and 41 of the *Employment Act* contemplate an employer informing an employee of envisaged disciplinary action and allowing him to make representations.
11. The exercise is an essential of procedural fairness and the Court can see no unlawfulness in the decision of the Respondent to call upon the Claimant to respond to the allegations outlined against him in the show cause.

Unfair termination of service

Procedural fairness

12. Procedural fairness is undergirded by sections 35(1) and 41 of the *Employment Act*.
13. The Respondent notified the Claimant of allegations against him through memos dated 28 May 2015, 4 June 2015 and 11 June 2015.
14. On 15 October 2015, the Respondent invited the Claimant to attend a disciplinary hearing on 19 October 2015. The invitation informed the Claimant of the right to be accompanied by a colleague.
15. After termination of employment, the Claimant appealed and the Respondent considered the appeal.
16. The Claimant asserted that the process leading to the termination of his employment was tainted because the Respondent did not supply him with records or evidence to enable him to prepare a defence.



17. Upon show cause and interdiction, the Claimant formally requested the Respondent on 2 September 2015 to provide him with all documents relevant to the allegations against him to sufficiently respond. The Respondent replied on 3 September 2015 that investigations were still ongoing and, therefore, it was premature of the Claimant to request for documents.
18. The Respondent's witnesses testified that some of the documents which were considered by the Respondent during the disciplinary hearing were forensic reports on the Claimant's handwriting. The witnesses also confirmed that investigations were conducted by the Audit Risk Team.
19. In the Court's view, these records formed a key component of the evidence against the Claimant and the Respondent should have given him access to the records to adequately defend himself.
20. The Respondent did not grant the Claimant access to the records.
21. The Court, therefore, concludes that the Claimant was not granted sufficient or adequate opportunity to respond to the allegations against him.

Substantive fairness

22. Sections 43 and 45 of the *Employment Act* places a burden on the employer to prove the validity and fairness of the reasons leading to the termination of employment.
23. The reason given by the Respondent for dismissing the Claimant was involvement in an act of operational irregularity In that, you caused alterations to the tender document.
24. To discharge the burden, the Respondent's witness testified that the Claimant was a Supplies Officer and some time on 25 May 2015, he acted as the Chairman of a tender opening committee in the absence of the substantive chairman.
25. According to the witness, after opening the tenders, an award was made to Kenafric Diaries Ltd but when the Tender Evaluation Committee met on 27 May 2015, it realised that signatures and handwritings in the Tender Opening Register for Quotations differed with signatures and handwritings of the committee members on other Tender Opening Registers that had been opened on 25 May 2015. The witness stated that it was only the Claimant's signature and handwriting which were similar.
26. The witness also testified that there were alterations and overwriting of prices quoted by 3 firms and which quotations were lower than the prices quoted by Kenafric Diaries Ltd.
27. As a result of these, investigations were conducted and during the investigations, members of the Tender Opening Committee denied having signed the register availed by the Claimant. The Respondent produced before the Court the Tender Opening Register and Specifications.
28. The Claimant acknowledged in his response dated 12 June 2015 to the show cause that he acted as Chair of the Committee and that he kept the records. However, he denied being responsible for any alterations or forgery of the signatures of the Committee members.
29. The Claimant did not explain whether he lost the chain of custody of the records he kept.
30. The register had alterations and as the custodian of the records, the Claimant ought to have known how and why the alterations were made.
31. The Court finds that the Respondent had valid and fair reasons to terminate the contract.



Discrimination

32. The Claimant alleged discrimination in that the other members of the Tender Opening Committee were not put through a disciplinary process.
33. The allegations made by the Respondent were specific and to the effect that as the custodian of the tender records he altered the records.
34. The Claimant thus did not demonstrate that any of the other members of the Tender Opening Committee were or could have been involved in the alteration to support the assertions of discrimination or unequal treatment.
35. This head of the claim was not proved.

Reinstatement and Compensation

36. The Claimant separated from the Respondent in 2015, about 10 years ago. By dint of section of the *Employment and Labour Relations Court Act*, reinstatement is not available.
37. The Claimant served the Respondent for about 25 years and considering the length of service, the Court is of the view that the equivalent of 10 months' gross salary at the time of termination of employment would be adequate compensation (the Claimant did not disclose his gross salary at the time of separation).

Conclusion and Orders

38. In light of the above, the Court finds that terminating the Claimant's employment was procedurally unfair.
39. The Claimant is awarded:
 - (i) Compensation of 10 months' gross salary.
40. The Claimant is denied costs for failing to file/serve submissions within agreed timelines without explanation.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIVASHA ON THIS 27TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Okoth & Co. Advocates

For Respondent Titus Makhanu & Associates Advocates

Court Assistant Wangu

