



REPUBLIC OF KENYA



**Raga v Attorney General & another (Cause E344 of 2023)
[2025] KEELRC 939 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 939 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E344 OF 2023
L NDOLO, J
MARCH 27, 2025**

BETWEEN

MILTON MUNDIA RAGA CLAIMANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

**THE PRINCIPAL SECRETARY, MINISTRY OF FINANCE (THE NATIONAL
TREASURY) 2ND RESPONDENT**

JUDGMENT

Introduction

1. In his Statement of Claim as amended on 9th October 2023, the Claimant accuses the Respondents of unlawfully and unfairly terminating his employment.
2. The Respondents deny the Claimant's claim through a joint Statement of Defence dated 26th October 2023. The Claimant filed a Reply to Defence dated 1st March 2024.
3. At the trial, the Claimant testified on his own behalf and the Respondents called the Director, Human Resource Management at the National Treasury, Benson Giuthua. Thereafter, the parties filed written submissions.

The Claimant's Case

4. The Claimant pleads that he was employed on 22nd August 2006 and deployed as an Accountant in the National Treasury. At the time of separation, he earned a monthly salary of Kshs. 37,710.
5. The Claimant worked until 13th October 2021, when he was dismissed. He terms his dismissal as unlawful and unfair and therefore seeks the following remedies:



- a. An order of reinstatement back to employment;
- b. A declaration that he is still an employee of the Respondents;
- c. Kshs. 210,000 being 3 months' salary in lieu of notice;
- d. Kshs. 840,000 in compensation for wrongful termination;
- e. House allowance;
- f. Half salary withheld during interdiction;
- g. Severance pay;
- h. Certificate of service;
- i. Costs plus interest.

The Respondents' Case

6. In their Statement of Defence dated 26th October 2023, the Respondents state that the Claimant was employed by the National Treasury in November 2009, as an Accountant I, Job Group 'K'.
7. The Claimant was deployed at Samia National Sub-County Treasury in Funyula Examination Section. He was posted to Vihiga on 29th April 2016 and later to Mashuru, Kajiado on 25th July 2016.
8. The Respondents state that on 15th March 2018, the Director General, Accounting Services and Quality Assurance, vide memo Ag. 20/01/0149 VOL. I (26), reported that the Claimant, with seven other officers, while serving at Samia Sub-County Treasury, caused loss of government funds, through acts of omission and commission.
9. The memo is said to have arisen from an audit report for the period 2013/2014 to 2016/2017, dated 20th February 2018.
10. The Claimant was issued with a show cause letter dated 4th May 2018, citing allegations of gross misconduct, particulars being:
 - a. Ineligible payments totalling Kshs. 6,769,747;
 - b. Unsupported expenditure in respect of cash withdrawals for office use amounting to Kshs. 8,630,078;
 - c. Ineligible entries recorded in the cashbook as cash banking/direct credit totalling Kshs. 4,017,054.30;
 - d. Possible fraudulent payments totalling Kshs. 876,013;
 - e. Unsupported payments in respect of fuel consumption amounting to Kshs. 6,694,752;
 - f. Cash purchase contrary to Sections 107/108 of the Public Procurement and Disposal Act, 2015 totalling to Kshs. 2,315,982;
 - g. Accessing additional imprest before accounting for the previous ones contrary to Regulations 93(5) of PFMR, 2015.
11. The Claimant was placed on interdiction effective the date of the show cause letter.



12. The Claimant responded to the allegations levelled against him on 24th May 2018. The Director General, Accounting Services & Quality Assurance commented on the Claimant's response, vide memo Ref: PF2006042084(10) dated 2nd August 2018, recommending that the case be tabled before the Human Resource Management Advisory Committee (HRMAC) for further deliberation and necessary disciplinary action.
13. During the HRMAC meeting of 22nd February 2019, it was recommended that the Claimant be invited to appear before the Committee and make his representations. The Claimant presented himself before the Committee on 30th May 2019.
14. The Committee observed that the Claimant was in charge of voucher examination and authorisation of payments and concluded that he abetted financial malpractices, by failing to report such transactions whenever he encountered them. It was alleged that the Claimant would write cheques or raise imprests without documentation, on instructions from his supervisor, the Sub-County Accountant.
15. The Committee therefore recommended that:
 - a. The Claimant be dismissed from service with effect from 4th May 2018, being the date when he was placed on interdiction;
 - b. The Claimant be surcharged the sum of Kshs. 2,536,611 being the portion of misappropriated funds based on the role he played;
 - c. The case be referred to the Office of the Attorney General for recovery of the lost funds.
16. The Authorized Officer concurred with the recommendations of the HRMAC meeting of 14th June 2019. The recommendations were submitted to the Public Service Commission (PSC) for approval. In response, the PSC advised that the case be dealt with under delegated authority.
17. The Authorized Officer's decision was conveyed to the Claimant vide letter dated 20th December 2019. The Claimant appealed against the dismissal and his appeal was considered during the HRMAC meeting of 21st August 2020.
18. The Committee upheld the dismissal and its recommendation was submitted to the PSC for approval. The Commission considered the appeal and disallowed it, stating that the Claimant did not provide justifiable reasons to exonerate him from the charges. The Claimant was informed of the Commission's decision, vide letter dated 8th November 2021.

Findings and Determination

19. 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

20. The Claimant was dismissed by letter dated 20th December 2019, stating as follows:

“Dismissal From The Service

This is to convey to you the decision of the Authorized Officer on the recommendation of HRMAC meeting of 14th June, 2019 that;



- i. You be dismissed from service with effect from 4th May, 2018 on account of gross misconduct since you abetted financial malpractice by failing to report such transactions whenever you encountered them and wrote cheques/raised imprests without documentation.
- ii. You be apportioned ksh. 2,536,611.00 being the funds you misappropriated based on the role you played;
- iii. The case be referred to the office of the Attorney General for the recovery of the lost funds.

Upon dismissal you automatically forfeit any claims towards pension and other related benefits in accordance with the Pension Act Cap 189 of the Laws of Kenya.

Enclosed herewith please find [Official Secrets Act](#) Declaration Form for your completion and return to this office.

You should also surrender the identification Cards both for Civil Servants and the National Treasury Staff having ceased to be a bonafide Civil Servant.

Further, note that you have the right to appeal against the decision to the Authorized Officer within a period of ninety (90) calendar days from the date of this letter.

(signed)

Allan Bururia

For: Principal Secretary/national Treasury”

21. By this letter, the Claimant is accused of abetting and perpetuating financial malpractice during his tour of duty in Samia Sub County, by failing to report irregular transactions and raising payments without documentation.

22. The Claimant’s case is that he was an innocent sacrificial lamb in a systemic web of financial impropriety and malpractice. In his letter dated 24th May 2018, offered in response to the show cause notice, he gives what he refers to as ‘Additional useful information’, stating as follows:

“Attention should be drawn to you of how two District Commissioners misappropriated development money meant for constructing D.C.C’s offices. This was done in form of imprests. The two Mr. Watakila na Mr. Khalif did this in blatant violation of all existing laws. They would tell my boss lets e.g withdraw Kshs. 150,000 and when the recurrent money will come, we will recover the same. When the recurrent money came, they would refuse the same to be recovered and my boss would allow them to utilize the whole recurrent AIE without recovering the money meant for development. Our then National Sub County Accountant would then sign the surrenders at the top “OK process” and force us to sign. The responsibility for any development money rests squarely with Mr. Khalif, Mr. Watakila (D.C.C’s respectively) and my then boss Hezron O. Kaguoma the National Sub County Accountant.”

23. In adjudicating claims of unlawful and unfair termination of employment, the Court is required to inquire first, whether a valid reason for the termination has been established and second, whether in executing the termination, due process was observed.

24. As to what constitutes a valid reason, 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.
25. The foregoing provision codifies what is commonly referred to as the ‘reasonable responses test’ whose beacons 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.”
26. In its decision in *Kariuki v Trustees of Premier Academy Charitable Trust t/a Premier Academy* [2025] KEELRC 144 (KLR) this Court stated thus:
- “The hallmark of this test is that in assessing an employer’s action, the Court must guard against supplanting the employer’s decision with its own. In other words, the Court does not ask what action it would have taken had it been in the employer’s shoes. All the Court asks is whether the decision taken by the employer is one that an ordinary reasonable employer would have taken, and if the answer is in the affirmative, the employer’s decision should not be disturbed.”
27. By his own admission, as contained in his response to the show cause notice, the Claimant witnessed misappropriation of funds, over time. This begs the question whether the Claimant, who was a professional Accountant in his own right, escalated the matter to his superiors at the National Treasury.
28. The Claimant claims to have written a letter dated 13th July 2015, detailing the financial improprieties but there was no evidence of receipt of this letter by the National Treasury. Moreover, according to his testimony before the Court, the Claimant did not report any coercion or harassment by his supervisor at Samia Sub County.
29. It would appear therefore that the Claimant watched as public funds were plundered within his area of jurisdiction. To my mind, this constituted professional negligence, giving rise to a valid reason for termination of the Claimant’s employment, as contemplated under Section 43 of the *Employment Act*.
30. The next question is whether due process was observed in effecting the termination of the Claimant’s employment. In this regard, Section 41 of the *Employment Act* sets out the following mandatory procedural fairness requirements:
- 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 the explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing 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.

31. According to the evidence on record, the Claimant was issued with a show cause notice dated 4th May 2018, to which he duly responded on 24th May 2018. Thereafter, he was invited to appear before the Human Resource Management Advisory Committee and was also allowed the right of appeal. The Court is therefore satisfied that the Claimant was afforded the procedural fairness safeguards set out in law.
32. Pursuant to the foregoing, the claims for reinstatement, compensation, notice pay and half salary withheld during interdiction are dismissed.
33. The claim for house allowance was not proved and no basis was established for the claim for severance pay. These claims therefore also fail and are dismissed.
34. I would have penned off this judgment at this juncture but for the following statement in the dismissal letter, which caught the attention of the Court:

“Upon dismissal you automatically forfeit any claims towards pension and other related benefits in accordance with the Pension Act Cap 189 of the Laws of Kenya.”
35. The only thing to say about this statement is that it flies in the face of Section 18(4) of the *Employment Act*, which provides as follows:
 - (4) Where an employee is summarily dismissed for lawful cause, the employee shall, on dismissal be paid all moneys, allowances and benefits due to him up to the date of dismissal.
36. As held in *Felister Waithegeni Mugweru v National Police Service Commission and 2 others* [2018] KEELRC 53 (KLR) and affirmed in *Agure & 6 others v Kenya Railways Corporation & 8 others* [2025] eKLR pension and related benefits constitute an accrued right that cannot be denied by virtue of the nature of separation.
37. I therefore make a finding that the Claimant is entitled to pension and related benefits.
38. He is also entitled to a certificate of service as provided under Section 51 of the *Employment Act*.
39. Each party will bear their own costs.
40. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF MARCH 2025

LINNET NDOLO

JUDGE



Appearance:

Mr. Mugo for the Claimant

Ms. Mochoge for the Respondent

