



**Marakia v Kenya Broadcasting Corporation (Cause E842 of 2021)  
[2025] KEELRC 910 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 910 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E842 OF 2021  
CN BAARI, J  
MARCH 21, 2025**

**BETWEEN**

**JEREMIAH MUSYOKI MARAKIA ..... CLAIMANT**

**AND**

**KENYA BROADCASTING CORPORATION ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed a Statement of Claim dated 20<sup>th</sup> August, 2021, seeking compensation for unfair termination of employment contract and payment of unpaid terminal due.
2. The Respondent entered appearance on 22<sup>nd</sup> August, 2022 and subsequently filed a Memorandum of defence dated 23<sup>rd</sup> September, 2022, wherein, it denied the Claimant's claim.
3. The suit was first heard by Hon. Justice James Rika on 28<sup>th</sup> February, 2024, when the Claimant testified in support of his case. The Respondent's case was heard on 31<sup>st</sup> October, 2024, when Ms. Violet Araka and Ms. Pauline Etyang testified in support of the Respondent.
4. Both parties filed submissions in the matter.

**The Claimant's Case**

5. The Claimant's case is that he was the Acting Finance and Administration Manager of the Respondent appointed to the position by the Acting Managing Director on 11<sup>th</sup> September, 2018. He further avers that he joined the Respondent through a contract of employment dated 2<sup>nd</sup> November, 2016 when he was first appointed as Finance Manager SS BE 2, earning a gross salary of Kshs. 187,197/- per month.



6. He states that on 23<sup>rd</sup> March, 2017, the Respondent through one Daniel Okoth on behalf of the Respondent's Managing Director by a letter of even date, informed him that the National Security Intelligence had cleared him to handle confidential information in the Corporation.
7. It is his case that on 1<sup>st</sup> June, 2018, when His Excellency the President of the Republic of Kenya directed that all heads of Accounting and Procurement Departments within the Public Service (Ministries, Departments, Agencies and State Corporations) step aside to undergo lifestyle audit and fresh vetting, the then Finance and Administration Manager of the Respondent one Dr. Henry Isinta Momanyi proceeded on compulsory leave as so directed.
8. The Claimant states that due to his diligence to duty, competence and ability to discharge his mandate as the Finance Manager SS BE 2 under the employment contract, was on 14<sup>th</sup> September, 2018 appointed by the then Acting Managing Director Paul Jilani to act as the Finance and Administration Manager on grade DS BB1 effective 5<sup>th</sup> June, 2018.
9. That as the Acting Finance and Administration Manager, he introduced several changes at the Respondent's Corporation to the benefit of the Respondent, such as online payments and petty cash ceilings.
10. It is his case that on 1<sup>st</sup> October, 2019 the said Dr Henry Isinta Momanyi was cleared and he returned to his office as the Finance & Administration Manager.
11. The Claimant states that on 24<sup>th</sup> December 2019, which was Christmas eve, he received a call from Ms Josephine Mwaniki requesting him to approve 40% online payment to Star times Software Technology Company Limited for the delivery of software equipment to the Corporation worth 330 Million.
12. He contends that he declined to approve the said payment for the reason that he was away for his Christmas break, and could therefore not verify the said equipment without the input of the software Technical staff.
13. The Claimant further states that on 18<sup>th</sup> May, 2020, he received a show cause letter from the Managing Director after a purported audit which had been ordered by the Managing Director and conducted for the period between 1<sup>st</sup> July, 2019 to 29<sup>th</sup> February, 2020 on allegations that the Claimant, who was never involved in the audit, had been involved in financial irregularity and had irregularly received and paid out the Corporation's monies amounting to Kshs. 10,508,150/-.
14. He avers that on 28<sup>th</sup> May, 2020, he responded to the show cause letter and requested for more information and the reports on the purported embezzled money, but no clarification was ever made to him, instead, on 28<sup>th</sup> July, 2020 he received an interdiction letter dated 27<sup>th</sup> July, 2020. The Claimant further states that on 26<sup>th</sup> April, 2021, the Respondent through its Managing Director issued him a summary Dismissal letter.
15. The Claimant states that he thereafter lodged an appeal against his summary dismissal under Regulation K 9(ii) (e) of the Code of Regulations.
16. It is his case that the Respondent by a letter of 2<sup>nd</sup> June, 2021 acknowledged receipt of his appeal and promised to revert, but to date he has not received any response from the Respondent in regard to his appeal.
17. He avers that the Respondent has to date not advanced any reasons for the action it took against him, and contends therefore that the Respondent's action amounts to unfair termination of his contract of employment.



18. It is the Claimant's position that at the time of termination of his contract of employment, he was earning a gross salary of Kshs 221,562/- per month. He states further that he is entitled to his terminal dues for unfair termination of his employment comprising of three months in lieu of notice and payment for his remainder of contract which was 20 years at termination.
19. The Claimant states further that he suffered embarrassment, mental anguish coupled with the stigma of losing employment at a young age, thus has suffered loss and damage.
20. On cross-examination, the Claimant denied having approved the IOUs as no vouchers indicating his approval were provided. He further states that he directed that everyone who issued IOUs should be deducted and that the payroll confirms the deductions.
21. The Claimant prays that his claim be allowed.

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

22. The Respondent contends that the Statement of Claim is defective as it was not given proper notice as per Section 46 of the [Kenya Broadcasting Corporation Act](#).
23. It is the Respondent's case that following an internal audit covering the period 1<sup>st</sup> July 2019 to 29<sup>th</sup> February 2020, the Claimant's case was forwarded to the Respondent's Staff Management Committee which handles disciplinary matters so that further disciplinary measures could be taken against the Claimant for misappropriation of funds.
24. It states that an Adhoc Staff Management Committee was constituted to handle this particular case given the gravity of the same. That pursuant thereto, the Claimant was issued with a show cause letter on 18<sup>th</sup> May 2020 following the revelation of serious financial irregularities on his part.
25. That the Claimant was interdicted from duty with effect from 29<sup>th</sup> July 2020 vide a letter dated 27<sup>th</sup> July 2020 to allow for further investigations into the matter. That the adhoc Staff Management Committee conducted a hearing and the Claimant appeared before them on the 2<sup>nd</sup> and 9<sup>th</sup> September 2020, where he presented his evidence.
26. It is its case that the adhoc Staff Management Committee having heard the evidence and reviewed the KBC Code of regulations which governs staff matters, recommended summary dismissal of the Claimant's to safeguard the interest and obligations of the Corporation in safeguarding public funds. That the Claimant was summarily dismissed from service via a letter dated 26<sup>th</sup> April 2021, which detailed all the reasons that led to his dismissal.
27. The Respondent states that the Claimant then appealed his dismissal via a letter dated 24<sup>th</sup> May 2021, which was forwarded to the Respondent's Appeals Committee for deliberation. That the Respondent's Appeals Committee met to deliberate on the Claimant's appeal on 7<sup>th</sup> June 2021, and recommended the appeal be forwarded to the Respondent's Board of Directors.
28. It states that its Board of Directors at their meeting held on 8<sup>th</sup> July 2021 declined the Claimant's appeal, and further recommended to the Respondent to institute criminal proceedings against the Claimant.
29. That the decision by the Respondent's Board of Directors to decline the Claimant's appeal was communicated to him vide a letter dated 20<sup>th</sup> August 2021.
30. It avers that it lawfully terminated the Claimant's employment with the Corporation. It further admits the contents of paragraph 28 of the Statement of Claim as descriptive of the Claimant's gross salary.



31. RW2, one Ms. Pauline Etyang, the Respondent's senior internal auditor told court on cross-examination that the audit conducted by the Respondent was in respect of accounting of petty cash and to evaluate internal controls.
32. She further told court that the audit unearthed malpractices which were attributed to the Claimant, and that a large sum of money was lost.
33. It is her testimony that the Claimant had taken Kshs. 108,000 and another Kshs. 549,789 fraudulently, and that he was allowed opportunity to account for the missing funds.
34. It is RW2's testimony that a Ms. Elizabeth Matheka was in-charge of petty cash and that she was also dismissed. It is her further testimony that the cashier had control of petty cash on the authority of the Finance & Administration Manager. She stated that all I.O.U.s were signed by the Claimant and were an irregular arrangement that the Claimant used to pay employees without vouchers.
35. The Respondent prays that the Claimant's claim be dismissed with costs.

### **The Claimant's Submissions**

36. It is the Claimant's submission that no document was ever submitted to court in regard to the receipt of IOU amount by the Claimant. He submits further that the IOU forms do not indicate that those amounts were indeed collected by or paid to the Claimant, and the Claimant's signature is not on the said forms showing that in fact it is him who was paid and/or collected the said amounts.
37. He submits that no evidence of the allegations he is accused of was exhibited to this Court, and when it is said that the Claimant received money from the Respondent irregularly, nothing would have been easier than that aspect of receipt of the money to have been exhibited in court.
38. It is his submission that the Respondent has not proved that the summary dismissal of the Claimant from his employment was justified. He submits further that in this case, the Respondent has failed to discharge the burden placed on it by the law in proving that the termination was reasonable.
39. The Claimant finally urges the court to find that the termination of his employment was unfair, illegal and therefore, the Claimant is deserving of grant of the prayers listed in the Statement of claim together with costs of this suit.

### **The Respondent's Submissions**

40. It is the Respondent's submission that any reasonable employer would have arrived at the same decision arrived at by the Respondent herein. It placed reliance in the case of Zipporah Nyambura Maina vs Kenya Association of Manufacturers [2022]eKLR was guided by the holding in the South African case of Nampak Corrugated v7adeville vs Khoza (1998) ZALAC 24) where the Labour of Appeal Court expressed itself thus;

“ court should, therefore not lightly interfere with the sanction imposed by the employer unless the employer acted unfairly in imposing the sanction. The question is not whether the court would have imposed the sanction imposed by the employer, but whether in the circumstances of the case the sanction was reasonable”.

41. The Respondent submits that the Claimant was issued with a Show Cause letter dated 18<sup>th</sup> May, 2020, which sought that Claimant accounts for Kshs.10,508,150.00, which was the initial amount that the Audit Report indicated to have been unaccounted for by the Claimant.



42. It states that on 28<sup>th</sup> May, 2020, the Claimant responded to the show cause letter and his response saw him avail a number of vouchers. It states further that on 27<sup>th</sup> July, 2020 the Respondent issued the Claimant with an interdiction letter and referred to an unaccounted payment of Kshs.9,304,688.00.
43. It is the Respondent's submission that it substantially complied with the mandatory provisions of the law and it afforded the Claimant the maximum extent of procedural justice. The Respondent relies in the case of *Judicial Service Commission vs Gladys Boss Shollei & Another* [2014]eKLR where the Court of Appeal stated at paragraph 96:-
- “ Given the attitude displayed by the respondent that she was not answerable to the appellant, and her refusal to deal with the substantive issues, it cannot be said that the decision taken by the appellant was outrageous or had no rational basis. Thus in my view the respondent's right to administrative action was not violated as the action taken was reasonable, procedurally fair, and lawful.”
44. The Respondent urges the Court to find that it has discharged its burden as per the dictates of the law, that there was overwhelming evidence and proof that the Claimant was negligent in the performance of his work, and therefore, there was genuine and valid grounds to terminate his employment.

### **Analysis and Determination**

45. The issues that crystallize for determination are:
- i. Whether the Claimant was unfairly dismissed
  - ii. Whether the Claimant deserves the reliefs sought

### **Whether the Claimant was unfairly dismissed**

46. Under his Statement of Claim dated 20<sup>th</sup> August, 2021, the Claimant seeks compensation for unfair termination and payment of terminal dues.
47. A dismissal from service is deemed to be fair where the employer meets a just cause standard by prioritizing fair treatment of an employee through adherence to procedural fairness, and the substantive justification for the dismissal.
48. On the question of procedural fairness, a dismissal is procedurally fair where the employer affords an employee an opportunity to state his case, and have a representative of his choice present during a disciplinary hearing.
49. Section 41 of the *Employment Act*, demands that an employer before terminating the services of an employee on the grounds of misconduct, poor performance or physical incapacity, explains to the employee, in a language the employee understands, the reasons for which termination is being considered. In *Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd* [2013] eKLR, fair procedure was explained thus:-

“ The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee....Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly if it is a case of summary



dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

50. It is not disputed that the Claimant was issued a notice to show cause letter spelling out the charges levelled against him. It is similarly true that the Claimant responded to the show cause letter, and although he denied in his pleadings having appeared before a disciplinary committee, he admitted on cross-examination that he did.

51. It is also not disputed that the Claimant was informed to attend the hearing accompanied by a representative, and that he chose to appear without one.

52. In *Silvester Malei Kyengo v Kenya Meat Commission (2019) eKLR*, the court held:-

“In this case the Claimant was first served with a show cause letter stating the charges against him, interdicted pending investigation, accorded an oral hearing in the company of another employee of his choice and finally served with a termination letter confirming that his defence was considered but his services terminated for reasons cited in the letter. Such procedure in my view passes the test of procedural fairness and I so hold.”

53. The Claimant did appeal against his dismissal and a response disallowing his appeal was placed before court. It is worth noting however, that the appeal was lodged on 24<sup>th</sup> May, 2021 and a reply to the same is dated 20<sup>th</sup> August, 2021, the same day the case was lodged before court, but which delay the court does not deem substantial as to render the process unfair.

54. I in the end conclude that the Claimant’s dismissal was procedurally fair.

55. On the reasons for the dismissal, the Claimant was summarily dismissed from the service of the Respondent vide a letter dated 26<sup>th</sup> April, 2021 for gross negligence of duty, improper conduct and misappropriation of the Corporation’s funds amounting to Kshs. 6,136,663.00.

56. He denied having issued I.O.U.s, but admits on cross-exam that he directed that everyone who issued I.O.U.s should have the amounts deducted from their salaries. It is crucial to note that the period of the audit was the time the Claimant was the Acting Finance and Administration Manager.

57. In *Kenfreight (EA) Ltd v Benson K. Nguti [2016] eKLR* the Supreme court stated:-

“Termination of employment will be unfair if the court finds that in all the circumstances of the case, it is based on invalid reasons or if the reason itself or the procedure of termination is itself not fair”.

58. The audit report placed before court, indicates that the Claimant received a total of Kshs. 4,586,954 out of which he refunded Kshs. 799,700, leaving a balance of Kshs. 3,634,749.

59. The report further shows that other employees received the Corporation’s money irregularly during the tenure of the Claimant, hence the charges levelled against him, the ensuing disciplinary action and the subsequent dismissal.

60. In *Nyeri Civil Appeal No.97 of 2016 Reuben Ikatwa & 17 others v Commanding Officer British Army Training Unit Kenya & another*. The Court of Appeal held:

“In a claim such as this, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred rests with the employee, while the burden of justifying the



grounds for the termination of employment rests with the employer. See Section 47(5) of the *Employment Act...*”

61. Further in Charles Musungu Odana v Kenya Ports Authority [2019] eKLR, the Court stated;

“It is now clear that the burden placed on an employer by Section 43 of the *Employment Act* is to establish a valid reason that would cause a reasonable employer to terminate employment.”

62. The Claimant herein, has not challenged the audit report produced by the Respondent in evidence and which formed the basis for his summary dismissal.

63. In my considered view, the findings of gross negligence of duty, abuse of office and questionable integrity as an accounting officer in charge of the Respondent's funds, is fair and justified ground to dismiss the Claimant. These are no doubts fair reasons upon which a reasonable employer would dismiss.

64. In the premise, I find and hold that the Claimant's dismissal is both procedurally and substantively fair.

#### **Whether the Claimant is entitled to the reliefs sought**

65. The Claimant sought payment of three months salary in lieu of notice, payment for the remainder of his contract term, general damages and issuance of a certificate of service.

66. The first three prayers collapse on the finding that the Claimant's dismissal was not unfair.

67. The Claimant is however entitled to issuance of a certificate of service, and which I order that the Respondent issues within 7 days of this judgment.

68. Save for the certificate of service, I proceed to dismiss the rest of the Claimant's claim with no orders on cost.

69. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Kaingu present for the Claimant

N/A for the Respondent

Ms. Esther S- C/A

