



REPUBLIC OF KENYA



**Kiplimo v Kenya Revenue Authority (Cause E766 of 2022)  
[2025] KEELRC 913 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 913 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E766 OF 2022  
BOM MANANI, J  
MARCH 20, 2025**

**BETWEEN**

**THEOPHILUS KIPLIMO ..... CLAIMANT**

**AND**

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

**JUDGMENT**

**Background**

1. The dispute between the parties relates to the alleged unfair termination of the Claimant's employment. The Claimant's case is that the Respondent terminated his services without valid reason and without regard for the principles of fair procedure. As such, he seeks the several reliefs that are set out in the Statement of Claim.
2. Conversely, the Respondent has refuted the Claimant's assertions. It contends that the Claimant's contract was terminated for valid reasons and in accordance with fair procedure. As such, it seeks that the instant suit be dismissed with costs.

**Claimant's Case**

3. The Claimant contends that the Respondent offered him employment as a Customs and Border Control Officer with effect from 18<sup>th</sup> March 2019. He avers that his gross monthly salary was agreed at Ksh. 117,000.00.
4. The Claimant avers that he served the Respondent diligently until 29<sup>th</sup> March 2022 when the Respondent unlawfully terminated his contract of service. He contends that he had committed no wrong to warrant the Respondent's decision.
5. From the pleadings and evidence tendered by the Claimant, it is his case that the Respondent asked him to submit his wealth declaration forms for the period 2019-2021. He contends that in compliance



with this directive, he submitted the forms in hard copy within the set timelines. However, a few days later, he was notified that the forms could not be located. As a result, he submitted scanned copies in a bid to meet the timelines that had been set by the Respondent.

6. The Claimant contends that on an undisclosed date, he received the Respondent's letter dated 29<sup>th</sup> March 2022 terminating his services allegedly for failure to submit the aforesaid wealth declaration forms. It is his case that the letter caught him by surprise since he had not been notified of any impending disciplinary process against him.
7. The Claimant accuses the Respondent of having failed to accord him an opportunity to defend himself before the decision to terminate his contract was made. He further contends that the Respondent did not explain to him the reasons for its decision. It is his case that the Respondent failed to uphold procedural fairness whilst processing his release from employment. As such, he contends that the decision offends the law and *the Constitution*.

### **Respondent's Case**

8. In response, the Respondent concedes that the parties indeed had an employment relationship as asserted by the Claimant. It contends that the Claimant was required to submit his wealth declaration forms for the period 2019-2021 but failed to do so.
9. The Respondent avers that submitting the aforesaid forms is a statutory requirement and the Claimant was aware of this. As such, his failure to submit them was in breach of the law.
10. The Respondent avers that its officers reminded the Claimant severally, through phone calls and email correspondence, of the need to submit the forms. However, the Claimant allegedly ignored these reminders.
11. The Respondent avers that the Claimant's conduct breached the law and its internal policies. It contends that the conduct amounted to negligence of duty and insubordination through willful disregard of lawful directives. As such, the Claimant was guilty of gross misconduct which rendered him amenable to summary dismissal from employment.
12. The Respondent avers that it issued the Claimant with a Notice to Show Cause on 2<sup>nd</sup> February 2022 to explain why disciplinary action should not be taken against him for the aforesaid infractions. However, he allegedly did not respond to it.
13. The Respondent further contends that on 25<sup>th</sup> February 2022, it invited the Claimant for a disciplinary hearing scheduled for 3<sup>rd</sup> March 2022. However, he allegedly failed to turn up. As a result, it (the Respondent) contends that it terminated his services through its letter dated 29<sup>th</sup> March 2022.
14. The Respondent avers that the Claimant was informed of his right to challenge the decision on appeal. It further contends that the Claimant filed the appeal but it was dismissed on the merits as it did not introduce any new aspects to the case. As such, it (the Respondent) contends that the process of terminating the employment relation between the parties was procedural.

### **Issues for Determination**

15. After evaluating the pleadings and evidence on record, I arrive at the conclusion that the following are the issues for determination in the action:-
  - a. Whether the contract of service between the parties was lawfully terminated.
  - b. Whether the Claimant is entitled to the reliefs that he seeks through this action.



## Analysis

16. In his Statement of Claim, the Claimant contends that the Respondent terminated his services without valid reason. He contends that the Respondent did not inform him of the reasons for its decision. By this, he implies that the Respondent did not have substantive grounds to terminate his contract. As such, he contends that the decision allegedly contravened sections 41, 43 and 45 of the [Employment Act](#).
17. The Respondent has refuted this assertion. According to it, there was justification for its decision.
18. The Respondent accuses the Claimant of various infractions. These include: failure to submit his wealth declaration forms; negligence of duty; and insubordination by refusal to obey lawful instructions.
19. As regards failure to submit the wealth declaration forms, the starting point is perhaps the Claimant's own appeal letter to the Respondent dated 28<sup>th</sup> April 2022. At paragraph 3 of the letter, the Claimant stated as follows:-

“On the first accusation of failure to submit the Biennial Wealth Declaration, I submitted the original wealth declaration form in the prescribed way. A few days later, I was informed that my hard copy form was not found. Since the deadline was fast approaching, I tried as much as possible to resubmit the form in scanned soft copy form.

At the time, my email was experiencing problems. I missed the email containing the notice to show cause as many emails were coming in at the same time.”

20. This statement affirms a number of things. First, it affirms the fact that although the Claimant contends that he submitted the forms in question, the Respondent notified him that it did not have them. Second, it suggests that the Claimant “tried as much as possible to resubmit the form in scanned soft copy form.” However, there is no evidence that the scanned copies ever reached the Respondent.
21. The Claimant contends that his email had a problem at the time. As such, he ought to have strived to confirm from the Respondent that it had received the scanned copies, if he indeed eventually successfully dispatched them. However, there is no evidence to demonstrate that he did this. As a matter of fact, the Claimant did not place before court any email correspondence between him and the Respondent to affirm his assertion that he attempted to resend scanned copies of the forms to the Respondent after the latter had informed him that it had not received the original copies which he had allegedly delivered to it.
22. The Respondent tendered in evidence an email dated 26<sup>th</sup> January 2022 (the email also bears a forwarding date of 1<sup>st</sup> February 2022) addressed to the Claimant. Through the email, the author reminded the Claimant to submit the aforesaid forms since the exercise of submitting them was coming to a close.
23. The Claimant does not deny receiving the aforesaid email. He does not deny that the email was sent to his official email address.
24. From the foregoing, it is clear to me that the Respondent notified the Claimant that his wealth declaration forms were yet to be received despite his contention that he had submitted the original copies. Although the Claimant alleges that he sought to resubmit scanned copies through email, he did not provide extracts of his emails to confirm whether the scanned copies were eventually sent to the Respondent.



25. It is also clear to me that the Respondent's officers reminded the Claimant through email of the need to submit the forms. As such, notwithstanding the Claimant's assertions to the contrary, I am satisfied that the Respondent notified him about his missing wealth declaration forms and the need to submit (or resubmit) them.
26. With respect to the charges of negligence of duty and insubordination, it is the Respondent's case that despite reminding the Claimant to submit the wealth declaration forms, he did not do so. As such, his conduct amounted to insubordination on account of refusal to obey lawful orders and negligence of duty.
27. The Respondent relies on the email dated 26<sup>th</sup> January 2022 from its officer to the Claimant to support this charge. The email refers to a telephone conversation between the said officer and the Claimant during which the Claimant was reminded of the need to submit the aforesaid forms. The Claimant was warned that failure to submit the forms will result in insubordination on account of refusal to implement lawful instructions. He was further warned that such conduct would render him liable to disciplinary action.
28. Although the Claimant denies that he was called by the officer as alleged in the email, he did not deny receiving the aforesaid email. He did not deny that the email address to which the email was sent was his official work email. It is curious that the Claimant did not find it necessary to respond to the email to refute the assertion in it that he had been called by the author of the email and advised to submit the forms if indeed it is true that he was never called for this reason.
29. From the Claimant's letter of appeal, it is clear that although he contends that he submitted the forms in question, the Respondent had informed him that it did not have the said forms. From the email of 26<sup>th</sup> January 2022, it is apparent that although the Claimant asserts that he sent scanned copies of the forms to replace the missing original ones, the Respondent notified him of the fact that it did not have the forms.
30. There is no evidence to suggest that the Claimant took steps to address the matter after he received the Respondent's email of 26<sup>th</sup> January 2022. There is no proof that he resubmitted the forms after he was notified that the Respondent did not have them.
31. The Claimant's aforesaid conduct amounted to willful failure to act on lawful instructions. It amounted to negligence of duty and as well insubordination. It offended section 44 (4) (c) and (e) of the *Employment Act* thus rendering him susceptible to summary dismissal from employment.
32. As such, I am satisfied that the Respondent has established that the Claimant was guilty of the aforesaid infractions. In the premises, I find that the Respondent had justification to act as it did.
33. The Claimant also accuses the Respondent of violating procedural protections accorded to him by law during the disciplinary process. He denies that the Respondent served him with the show cause letter. He further denies that he was accorded a hearing before his contract was terminated.
34. On the other hand, the Respondent avers that it issued the Claimant with the show cause letter on 2<sup>nd</sup> February 2022 but he did not respond to it. It further contends that it invited him to a disciplinary hearing through its letter of 25<sup>th</sup> February 2022 but he failed to show up.
35. The Respondent contends that the show cause letter and the invite to the disciplinary hearing were received by the Claimant in person and he signed to acknowledge receipt of the letters. It further avers that copies of the letters were shared with the Claimant via email.



36. The Claimant has denied receiving the hard copies of the aforesaid letters. He avers that he only received the email copy of the invite to the disciplinary session the evening before the session. As such, he was not able to show up for the hearing.
37. He also asserts that he was unwell at the time the disciplinary hearing was convened. Consequently, he alleges that he was not in a proper state of health to attend the session.
38. Although the Claimant has denied receiving the physical copies of the show cause letter and the invite to the disciplinary session, the Respondent's witness stated that the Claimant picked the letters from the office and signed for them. The witness said that he was present when the Claimant collected the letters and signed on the copies to acknowledge receipt of the letters.
39. The defense witness further said that he was familiar with the Claimant's signature because he had seen him sign documents at the office a couple of times. He asserted that the signature on the show cause letter and the invite to the disciplinary session acknowledging receipt of the two documents was the Claimant's.
40. Despite the dispute regarding whether the Claimant appended his signature on the two documents, neither of the parties subjected the documents to forensic analysis. As such, the court has to resort to other mechanisms provided in law to resolve the mystery of whether the Claimant indeed signed the two documents to acknowledge their receipt.
41. Section 50 of the *Evidence Act* allows admission of non-expert opinion to resolve authorship of contested documents. It provides as follows:-
- “ When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is admissible.
- For the purposes of subsection (1) of this section, and without prejudice to any other means of determining the question, a person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business documents purporting to be written by that person have been habitually submitted to him.”
42. From this provision, it is clear that the court may rely on the evidence of a person who is familiar with the handwriting and signature of an individual to resolve controversy regarding whether the individual authored or signed a contested document. The person giving such evidence need not be a handwriting expert. All that is required of him is proof of familiarity with the handwriting and signature of the purported author through routine and habitual interactions with him (the purported author).
43. In the case before me, although the Claimant denied signing the show cause letter and invite to the disciplinary session, the Respondent's witness insisted that he (the Claimant) collected these letters from the Respondent's office and signed on the copies to acknowledge their receipt. The witness said that he had worked with the Claimant and was familiar with the way his signature looks. He stated that from previous interactions with documents which were authored by the Claimant, he had no doubt that the signatures on the show cause letter and invite to the disciplinary session were those of the Claimant.



44. The Claimant did not deny that he had interacted with the defense witness whilst authoring and signing documents at the workplace. He did not deny that he had worked with this witness over time. As such, the court is inclined to believe the evidence of the Respondent's witness that he was familiar with the signature of the Claimant and that it is the Claimant who indeed signed the show cause letter and the invite to the disciplinary session to acknowledge their receipt.
45. Importantly in respect of the contested signatures on the two documents, it is noteworthy that in the Respondent's letter terminating the Claimant's services dated 29<sup>th</sup> March 2022, the Respondent specifically asserted that the Claimant acknowledged receipt of the two letters by signing on them but ignored to act them. The Respondent expressed itself on the subject as follows:-
- “It is noted that you neither made your written representations nor appeared before the disciplinary panel for oral submissions as invited. This is despite receipt and signing for both the show cause letter referenced here above as well as the letter Ref: Conf/12492(22) dated 25<sup>th</sup> February 2022 inviting you to appear before the disciplinary panel on 2<sup>nd</sup> and 25<sup>th</sup> February 2022 respectively.”
46. A look at the Claimant's letter of appeal dated 28<sup>th</sup> April 2022 confirms that he received the aforesaid letter of termination dated 29<sup>th</sup> March 2022. Curiously, he did not controvert the aforesaid assertion by the Respondent that he had been served with and signed for the physical copies of the show cause and invite to the disciplinary session.
47. If indeed the Claimant was not issued with the two letters contrary to the assertion by the Respondent in its letter dated 29<sup>th</sup> March 2022, why did he not contest this assertion by the Respondent in his letter to the Respondent dated 28<sup>th</sup> April 2022? The fact that he did not contest the aforesaid assertion in the Respondent's letter of 29<sup>th</sup> March 2022 when he wrote his appeal only suggests that he indeed received and signed for the two letters. As such, his subsequent denial of the two letters was an attempt to unjustly bolster his case.
48. The Claimant further suggested that he could not have been at the office on 25<sup>th</sup> February 2022 to sign the invite since he was unwell. This is ingenious. The sick-off he relies on to advance this argument only speaks to the fact that he was to be off duty until 25<sup>th</sup> February 2022. This does not mean that he was immobilized and prevented from visiting the office even on the last day of his sick-off. The fact that the doctor indicated that the sick-off was to end on 25<sup>th</sup> February 2022 means that he (the doctor) anticipated that the Claimant would be well by this date and therefore able to resume duty on the morning of 26<sup>th</sup> February 2022. As such, I do not find it incredible that the Claimant may have visited the office on 25<sup>th</sup> February 2022 when he was given the invite for the disciplinary hearing.
49. Having regard to the foregoing, I reach the conclusion that contrary to the assertions by the Claimant that he was not issued with a show cause letter, the Respondent issued him with the show cause which set out the accusations against him. I further find that he was issued with a physical copy of the invite to the disciplinary session on 25<sup>th</sup> February 2022 and he acknowledged receipt thereof by appending his signature on the return copy.
50. The Claimant also asserts that he was prevented from attending the disciplinary session due to the fact that he was unwell. To support this contention, he relies on a medical certificate dated 20<sup>th</sup> February 2022.



51. The certificate shows that the doctor gave the Claimant sick-off for four (4) days from 20<sup>th</sup> February 2022 to 25<sup>th</sup> February 2022. As such and if the document is anything to go by, the Claimant was expected to have been back at work from 26<sup>th</sup> February 2022.
52. The evidence on record shows that the disciplinary hearing was scheduled for 3<sup>rd</sup> March 2022. At this time, the Claimant was expected to have resumed work. As such, absent proof that the aforesaid sick-off was extended to 3<sup>rd</sup> March 2022, the Claimant has not tendered medical evidence to demonstrate that he was prevented from attending the disciplinary session on account of sickness.
53. The evidence on record speaks to the fact that the Claimant was issued with the notice to show cause dated 2<sup>nd</sup> February 2022 on even date. The evidence further speaks to the fact that the show cause set out the charges against the Claimant. The evidence also demonstrates that the Claimant did not respond to the show cause. The evidence also shows that the Claimant was invited to the disciplinary session of 3<sup>rd</sup> March 2022 by a letter dated 25<sup>th</sup> February 2022 which he received on even date. However, he failed to attend the session for unclear reasons.
54. Although the Claimant says that he was unwell on 3<sup>rd</sup> March 2022, there is no evidence to support this assertion. The evidence he has produced demonstrates that he was on sick-off up to 25<sup>th</sup> February 2022.
55. The record shows that the Respondent dismissed the Claimant from employment after he failed to respond to the charges against him and to attend the disciplinary session slated for 3<sup>rd</sup> March 2022 despite having been invited to attend the session through an invite that was shared with him through a physical letter handed to him on 25<sup>th</sup> February 2022 and an email reminder send to him on 2<sup>nd</sup> March 2022. The record also shows that the Respondent informed the Claimant of the right to appeal and that he did appeal. The record shows that the appeal was dismissed for failure to raise any new matters.
56. From the foregoing, it is apparent that the Respondent complied with the procedural strictures in sections 41, 43 and 45 of the *Employment Act* whilst processing separation of the parties. As such, I arrive at the conclusion that the Claimant was accorded fair procedure in the process that led to closure of his employment with the Respondent.
57. Counsel for the Claimant contends that even if it is shown that the Claimant failed to submit the wealth declaration forms contrary to the directions by the Respondent, this did not warrant the penalty of dismissing him from employment. Counsel argues that the Respondent should have resorted to less punitive measures since section 44 of the *Employment Act* does not identify failure to submit wealth declaration forms as an act of gross misconduct.
58. The position expressed by counsel in this respect is erroneous. It is to be noted that the Respondent's case was that the Claimant's failure to submit the forms despite constant reminders amounted to insubordination through defiance of lawful instructions and negligence of duty both of which constitute gross misconduct under section 44 of the *Employment Act*.
59. Further, the court is not entitled to substitute an employer's decision with its own merely because the decision is perceived as harsh. It (the court) can only upset a disciplinary decision if it was rendered without substantive justification and in contravention of the procedural protections that are accorded to an employee during processing of a disciplinary hearing.
60. To do the contrary will be tantamount to usurping the employer's prerogative to manage the workplace. That is not permissible (see Alfred Nyungu Kimungui v Bomas of Kenya [2013] eKLR).
61. So long as the employer's decision is within the band of decisions which a reasonable employer would have made based on the same set of facts, the court must not interfere with it (the decision) merely



because it (the court) considers that it would have handled the matter differently, had it been in the shoes of the employer (see Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR). It (the court) must uphold the decision.

### **Determination**

62. The court finds that the Respondent's decision to terminate the Claimant's contract of service satisfied the substantive and procedural requirements of the law.
63. Therefore, the Claimant's case against the Respondent is devoid of merit.
64. As such, the suit is dismissed.
65. The Respondent is directed to process the Claimant's exit dues in terms of paragraph 6 of its Response to the Claimant's Statement of Claim dated 5<sup>th</sup> March 2023.
66. Each party to bear own costs of the suit.

**DATED, SIGNED AND DELIVERED ON THE 20<sup>TH</sup> DAY OF MARCH, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

