



**Mwenda v South Eastern Kenya University (Cause E005 of 2023)
[2025] KEELRC 727 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 727 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E005 OF 2023**

**B ONGAYA, J
MARCH 7, 2025**

BETWEEN

ALFRED MAWIRA MWENDA CLAIMANT

AND

SOUTH EASTERN KENYA UNIVERSITY RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim dated 10.07.2023 through Kasina and Associates Advocates. The claimant prayed for judgment against the respondent for:
 - a. An order reinstating the Claimant in the service of the respondent with immediate effect to the position held before summarily dismissal, without a break in his service with full prevailing benefits and to continue in that service until the due date of retirement or lawful separation.
 - b. A declaration that the claimant was dismissed irregularly, unlawfully, unfairly, wrongfully, un-procedurally without cause or justification and with breach of the law.
 - c. General damages for breach of contract.
 - d. Punitive damages for victimization of the claimant by the respondent.
 - e. An order of payment of all dues to the claimant in the period he was suspended, dismissed and twelve (12) months of compensation.
 - f. Costs of the claim.
 - g. Interest on (c), (d), and (e) above.
 - h. Any other relief the Honourable Court may deem fit to grant in the interest of justice.
2. The claimant's case is as follows:



- a. The respondent employed the claimant as an Administrative Assistant effective May 2010 and promoted to Senior Administrative Assistant. He was also a member of South Eastern University Credit and Savings Sacco (the Sacco) whose members are employees of the respondent.
- b. On 02.07.2021 the Sacco Chairman send a demand to the claimant alleging that the claimant in his capacity as Sacco member had embezzled Sacco Funds amounting to Kshs. 4, 609, 884.86 being between January 2018 to April 2021. The letter required the claimant to refund the money within 30 days failing legal proceedings would be instituted against him.
- c. The claimant replied by his letter dated 29.07.2021 stating that the amount was exaggerated and the only loan pending attributable to him was Kshs. 255,420.00 and which loan he had procedurally acquired as a Sacco member.
- d. The respondent delivered to the claimant the letter dated 12.08.2021 requiring the claimant to show how cause why disciplinary action should not be taken against him upon allegation that between 07.06.2018 and 16.06.2021 the claimant with intent to defraud the Sacco obtained loans amounting to Kshs. 4, 609,884.86 without following the loan application procedure and process and which loans he had failed to service.
- e. By letter of 18.08.2021 the claimant responded denying that he had colluded with either current or past officials of the Sacco, between 07.06.2018 and 16.04.2021, to defraud Sacco money contrary to procedures and processes regulating loaning by Sacco. He stated he only had an April 2021 loan which he had obtained regularly and was committed to pay if he agreed with Sacco Management.
- f. He was suspended by letter dated 24.08.2021 for colluding to irregularly obtain Sacco loans amounting to Kshs. 4, 609,884.86 without following loan application procedure and processes and refusing to service the loans contrary to section 11(1) and 23 I,ii,iii, section 20(1) and (3) of the *Public Officer Ethics Act*, 2003, section 44(4) (e) of *Employment Act* and Article 70(c) of Sacco Bye-laws. He would be paid half salary until the case was considered and determined by the Senior Staff Disciplinary Committee. He was invited for to appear before the Directorate of Criminal Investigation (DCI) at Kyusiani, Lower Yatta, per letter dated 24.08.2021 and fixed for 25.08.2021 at 9.00am.
- g. By letter dated 17.09.2021 he was invited to attend the disciplinary hearing before the Committee on 27.09.2021 at 9.00am. He attended before the Senior Staff Disciplinary Committee. He alleges he was denied an opportunity to defend himself and to appear with Counsel. Thereafter, he was arrested by police officers from Kyusiani and locked up at Kwa Vonza Police Station and released after one night without charges being preferred against him.
- h. He received the letter of summary dismissal dated 26.10.2021 upon the ground that he had failed to exculpate himself in view of the allegations levelled against him. He was allowed 14 days to appeal.
- i. The claimant alleges his constitutional rights were violated including Article 41 on fair labour practices; Article 50 on fair hearing; no reasons for dismissal were given per Article 47; and, dismissal letter was without notice contrary to Article 28 of *the Constitution*.
- j. He alleges he lost earnings, professional pride, self-esteem, and he suffered mental anguish. He alleges unfair and unlawful termination without justification as there was no valid and fair reason; the procedure was unfair; no fair hearing; and breach of procedure provided in law.



3. The respondent filed the statement of defence dated 15.10.2024 through Nicole K. Nyamai Advocate and prayed that the suit be dismissed with costs. The respondent pleaded as follows:
 - a. The employment relationship was not denied.
 - b. The claimant admitted in paragraph 7 of the statement of claim owing the Sacco Kshs.255,420.00 for loan he obtained in April 2021 but Sacco cheques banked in his accounts showed he had obtained loans irregularly as was alleged against him. He admitted owing the irregular Sacco loans but he refused to repay them.
 - c. The Sacco was an establishment of the respondent and the respondent was entitled to commence the disciplinary proceedings after the Sacco Board reported the complaint to the respondent.
 - d. He was accorded a fair hearing and the reason for termination was valid and fair. There was no violation of rights as alleged.
 - e. The respondent had nothing to do with the police decision to arrest the claimant.
 - f. The claimant has not provided evidence to support his case. It should be dismissed with costs.
4. The parties opted not to call witnesses and by consent order, the suit is for determination based on pleadings, documents filed for parties and final submissions. The Court has considered the material on record and returns as follows:
 - a. There is no dispute that parties were in a contract of service and the claimant was summarily dismissed per letter exhibited.
 - b. The claimant admits in the statement of claim that he received the letter to show-cause, he replied, he was invited to a disciplinary hearing, he attended, and subsequently a decision was made to summarily dismiss. He was given a chance to appeal in 14 days but he appears to have opted not to appeal. The Court finds that as submitted for the respondent he was accorded a fair procedure per sections 41 and 45 of the Employment Act, 2007.
 - c. The minutes of the Senior Staff Disciplinary Committee meeting of 27.09.2021 show several instances where the claimant obtained Sacco loans without due procedure such as obtaining approvals or inflating his share deposits. A table shows where he obtained loans without completing prescribed loan forms and without approval by both the Sacco Credit Committee and the Sacco Executive Committee. The minutes show the claimant did not know the exact amounts he owed the Sacco and he was not ready to repay the owed monies on account that the amounts stated were exaggerated. The Court has considered the minutes and returns that on a balance of probability, the claimant was culpable as was levelled against him. The reasons for termination were valid as existing per section 43 of the Act and as per the respondent's case, amounted to gross misconduct as related to respondent's operational requirements and the claimant's conduct or misconduct per section 45 of the Act.
 - d. Accordingly the dismissal was not unfair in procedure or substance. The claimant's alleged breach of rights is found empty without particulars that are established upon necessary evidence.
 - e. As urged for the respondent, the claimant has provided no basis and evidence that the respondent was in-charge of the arrest by the police and the one night he spent at the police cells.



- f. The suit is liable for dismissal. The claimant has not established or justified any of the remedies as prayed for.

In conclusion the suit is hereby dismissed with costs and the Deputy Registrar to forthwith return the file to the Machakos Sub-Registry.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 7TH MARCH, 2025**

BYRAM ONGAYA

PRINCIPAL JUDGE

