



**Lisanza v Lapfund Secured Retirement & another (Cause 198 of 2017)
[2025] KEELRC 1206 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1206 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 198 OF 2017
CN BAARI, J
APRIL 30, 2025**

BETWEEN

JOYCE LISANZA CLAIMANT

AND

LAPFUND SECURED RETIREMENT 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. The Claimant instituted this suit through a Statement of Claim dated 3rd February, 2017, and filed on even dated. Under the claim, she seeks the underlisted reliefs: -
 - i. A declaration that the termination of the Claimant's employment by the Respondent by the letter of 5th February 2014 was unfair.
 - ii. Kshs.3,308,880.00 being 12 months compensation for loss of employment.
 - iii. Severance pay of 15 days for every year worked. (Kshs. 2,619,530.00)
 - iv. Salary for the months between April 2013- February 2014
 - v. Cost of the suit.
 - vi. Interest on (b), (c) and (d) above at Court's rate.
 - vii. Such other or further reliefs as the Honourable Court would deem justified.
2. The 1st Respondent entered appearance on 23rd March, 2017 and proceeded to put in a Response to the Claim dated 6th April, 2017, contending that the Claimant was fairly terminated for being in breach of *the Constitution*, the Public Officers' Ethics Act, the Public Procurement and Disposal Act, and violation of the Respondent's terms and conditions of service.



3. The matter was first heard on 24th October, 2023, when the Claimant testified in support of her case, adopted her witness statement and produced the documents filed in the matter. The Respondent's case was heard on 9th October, 2024 with the calling of one Winnie Chemutai to testify on behalf of the Respondent. Winnie adopted her statement and produced the documents filed as exhibits in support of the Respondent's case.
4. Parties were thereafter directed to file their respective submissions to the Claim, and submissions were filed for the 1st Respondent only.

The Claimant's Case

5. The Claimant's case is that in the year 1995, she was employed by the 1st Respondent as a shorthand typist where she served until 1997, when she was re-deployed as an Executive Secretary/Personal Assistant between 1997 and 2009.
6. She states that on 1st July 2009, she was re-designated to head the Human Resource and Administration unit in addition to the responsibilities of Personal Assistant to the Chief Executive Officer. It is her further case that on the 23rd March 2011, she was again promoted to the position of Head, Human Resource and Administration, a position she held until her services were terminated on 5th February 2014.
7. It is the Claimant's case that sometimes in December, 2012, staff of the Respondent wrote a letter to the Permanent Secretary, Ministry of Local Government, seeking for investigation as to the conduct and qualifications of the Claimant herein. That subsequently, the Permanent Secretary Ministry of Local Government vide a letter dated 22nd January 2013, wrote to the Respondent referring to the letter, and seeking comments from the 1st Respondent.
8. It is the Claimant's case that on 25th March, 2013, the 1st Respondent issued her a Notice to Show Cause as to why disciplinary actions should not be taken against her on the following allegations; -
 - a. Procurement of AIR Travel and Booking Services by Marafiki Africa Tours & Travel Limited;
 - b. Material Non-disclosure and/or conflict of interest;
 - c. Disposal of idle assets without following the public procurement disposal procedures; and
 - d. Procurement of a venue for team Building in Malindi without following due procedure.
9. She states that vide her letter dated 4th April 2013, she responded to the 1st Respondent's letter, wherein, she sought for more information to enable her respond to the allegations. That despite requesting for documents, the Respondent in a letter dated 26th April 2013, informed the Claimant that she had not shown sufficient cause, and that she had been suspended from duty effective 26th April 2013, to allow for further investigations on the following allegations; -
 - a. Procurement of AIR Travel and Booking Services by Marafiki Africa Tours & Travel Limited'
 - b. Material Non-disclosure and/or conflict of interest;
 - c. Disposal of idle assets without following the public procurement disposal procedures; and
 - d. Procurement of venue for team Building - Malindi without following due procedure;
 - e. Assaulting an Officer of LAPFUND; and
 - f. Investigations by the Ethics and Anti-Corruption Commission



10. The Claimant states that she responded to the letter suspending her and noting that despite requesting for documents, the Respondent proceeded to suspend her, and further pointed out that additional allegations had been added in the suspension letter. She avers further that she never heard from the 1st Respondent until after six months when on the 31st October 2013, the Respondent wrote to the Claimant requesting her to attend a special Board on 7th November 2013. She states that the charges she was required to respond to were Conflict of interest in the case of Marafiki Safaris Limited, Disposal of idle assets without following the public procurement disposal procedures; and irregular acquisition of a Mortgage facility of Kshs. 1,860,000/ =.
11. It is the Claimant's case that she responded to the charges levelled against her in a detailed report and attended the Special Board Meeting on 7th November 2013. She states further, that she never heard from the 1st Respondent until 10th December 2013 when she was informed that the suspension had been extended for three more months from the 7th November 2013.
12. It is her case that on 27th January 2014, she was invited for a special Board Meeting on 5th February 2015, after which she was immediately summarily dismissed from the services of the 1st Respondent. She avers that the said termination was unjustified, unlawful and irregular and made in bad faith.
13. The Claimant avers that she was subjected to an unjustified prolonged suspension of 10 months without any explanation, that the Respondent failed to pay her the agreed and required notice period, and that the termination of her employment was without valid and justifiable grounds.
14. On cross-examination, the Claimant admitted having been accorded a fair opportunity to be heard.
15. It is her prayer that the court grants her the reliefs she seeks under the claim.

The Respondent's Case

16. The Respondent's case is that the Claimant was her employee who served in the position of Head of Human Resources, prior to her termination.
17. It states that issues were raised concerning how the Claimant handled matters within her docket, which issues were assigned to an Ad hoc Committee, which investigated the issues and prepared a report to the Board of the 1st Respondent on its findings.
18. The 1st Respondent states that its perusal of the aforesaid report, revealed at the initial stages, the following allegations against the Claimant;
 - i. That the Human Resource Department, which the Claimant headed at the material time, had not been fair to the 1st Respondent's pre-qualified suppliers for various services, and particularly tours and travel.
 - ii. That the Human Resources Department was sourcing tours and travel services from mainly one supplier going by the name of Marafiki African Tours & Travel Limited, and that the sourcing was always undertaken directly and without any quotations ever being floated in contravention of the relevant laws of Kenya, and especially, the provisions of the Public Procurement and Disposal Act.
 - iii. That there was credible evidence that the Claimant was a shareholder and or director in the aforesaid Marafiki African Tours & Travel Limited which had been awarded most of the work as far as air travel and booking was concerned.



- iv. That the awards to Marafiki tours amounted to material non-disclosure and/or direct conflict of interest.
 - v. That on or about 07/02/2012, the Claimant disposed off the 1st Respondent's assets without the consent of the supply Chain Officer and the relevant Asset Disposal Committee.
19. The Respondent states that the aforesaid issues were considered weighty, and had grave and far reaching implications as far as the management and operations of the 1st Respondents were concerned, and hence the need for their speedy resolution.
 20. It avers that as a consequent, it issued the Claimant with a Notice to Show Cause why appropriate disciplinary action should not be taken against her.
 21. It avers that the Claimant considered the issues raised in the Notice to Show Cause and responded in writing through a letter dated 4th April, 2013.
 22. The 1st Respondent states that its management received and reviewed the Claimant's response to the notice to show cause and found the same unsatisfactory and/or inadequate to stop the disciplinary process at that point in time. It states further that it was left with no alternative but to suspend the Claimant from employment at half pay in order to pave way for further and thorough investigations in accordance with the relevant legal provisions.
 23. The Respondent avers that the suspension was communicated through a letter date 26th April, 2013, which clearly stated that the disciplinary action against her was being taken based on allegations that bordered on gross misconduct.
 24. It is the 1st Respondent's averment that the disciplinary process against the Claimant was fully anchored under the relevant legal provisions including LAPFUND Terms and Conditions of Service.
 25. That subsequently, and in order to give the Claimant an opportunity to be heard over her disciplinary case, the 1st Respondent invited the Claimant to appear before its Board on 7th November, 2013 through a letter dated 31st October, 2013.
 26. The Respondent states that in the letter of 31st October, 2013, to the Claimant, it attached a concise outline of all the issues that formed the basis of the disciplinary proceedings which were to be dealt with during the Claimant's appearance in person.
 27. That pursuant to the letter aforementioned, the Claimant through a letter dated 4th November, 2013 sought clarification on certain issues, and further requested for additional information as well as expressing a desire to be represented during the Board appearances. It states that it satisfactorily replied to the Claimant's letter on the same day and addressed all the concerns raised, and forwarded all the documents requested and confirmed that the Claimant was at liberty to be accompanied to the Board meeting as per the requirements of Section 41 of the Employment Act of 2007.
 28. It is the Respondent's case that in the course of defending herself before the Special Board meeting on 7th November, 2013, the Claimant circulated fairly detailed documents in justification of her actions under probe to all the members, and that in light of this turn of events, the 1st Respondent's Board members deemed it necessary to have more time to study the Claimant's detailed defence as well as giving management ample time to prepare an appropriate response for further deliberation.
 29. It states further that due to the said circumstance, the Board adjourned and communicated to the Claimant that she will be required to remain on suspension for a further period of three (3) months



- until the matter is concluded, and communication to this effect was made vide a letter dated 10th December, 2013.
30. The Respondent states that the Claimant was again invited vide a letter dated 27th January, 2014, to appear before the 1st Respondent's Board meeting that was held on 5th February, 2014.
 31. The Respondent states that on 5th February, 2014, during its 33rd Special Full Board meeting, the Board deliberated on the Claimant's disciplinary case at length, and in her presence, and resolved that she be summarily dismissed from employment as Human Resource and Administration Manager, having been found guilty of the offences against her.
 32. It avers further, that the decision to dismiss the Claimant from employment was communicated in writing through a letter dated 5th February, 2014, which letter also confirmed that she would be paid one (1) month basic salary in lieu of notice and all terminal benefits as per the 1st Respondent's Terms and Conditions of Service, less any amount owed to LAPFUND.
 33. That the Claimant acknowledged receipt of the letter dated 5th February, 2014 dismissing her from employment, through her letter dated 20th February, 2014, and which was silent on utilization of internal appeal processes.
 34. The Respondent states that according to the Claimant's statement of account with respect to calculation of her terminal dues, she owed the 1st Respondent a sum of Kshs.860.390.55 with respect to the mortgage balance as at the time of dismissal from employment.
 35. That the Respondent subsequently calculated the Claimant's terminal dues, less the mortgage loan balance, and paid her a sum of Kenya Shillings Four Million, Sixteen Thousand, Nine Hundred and Seventy Three and Sixty Five Cents Only (Kshs.4,016,973.65).
 36. The Respondent states that the matter remained quiet until 21st May, 2015, when the Claimant wrote a demand letter claiming inter alia a sum of Kenya Shillings Six Million, Nine Hundred and Sixty-Eight Thousand, Six Hundred and Fifty-Two and Fourteen Cents Only (Kshs.6,968,652.14) on account of an alleged unlawful termination of the Claimant's employment.
 37. It states further that it instructed the law firm of Kipkenda & Company Advocates on 22/05/2015 to respond to the demand notice, and which was done through a response dated 29th May, 2015, and that yet again, the Claimant went quiet until the filing of this suit on 3rd February, 2017.
 38. The 1 Respondent's position is that it lawfully terminated the Claimant's employment after following due process of law including giving her an opportunity to be heard, not once, but severally, and thereafter paying her all terminal dues.
 39. The Respondent therefore prays that the Claimant's suit be dismissed with costs.

The Respondent's Submissions

40. The Respondent submits that the Claimant's summary dismissal was justified and the reason thereof meets all of the requisite legal thresholds, and urges this Court to find as so.
41. It submits further that the Claimant's dismissal resulted from a thorough investigation conducted by their Special Ad Hoc Committee, that found the Claimant's conduct in relation to Marafiki Safaris a carefully orchestrated pattern of deception and self-dealing that the investigation unearthed as serious procurement irregularities and conflicts of interest.



42. It is the 1st Respondent's submission that the Claimant's reliance on an undated, unstamped letter allegedly disclosing her directorship in Marafiki Safaris is disingenuous, as the supposed declaration falls woefully short of the comprehensive requirements established under Section 12(3) of the [Public Officer Ethics Act](#). It submits further that its investigation conclusively established that the letter lacked the CEO's office stamp, proving it was never formally received or filed as required by Section 3(3) of the Public Officers Ethics Act.
43. The 1st Respondent further submits that the letter was conspicuously absent from the Claimant's personnel file and the Internal Audit records, confirming her failure to comply with Clause 17 of the Public Service Code.
44. The Respondent submits that the Claimant's claims of limited involvement in the procurement process are contradicted by the evidence, which demonstrates her strategic positioning within the process, and the absence of competitive bidding documentation suggests she consistently favoured Marafiki Safaris over other providers, raising further questions about the transparency and fairness of the procurement process.
45. It is the Respondent's submission that the Claimant's handling of tyre disposal demonstrated clear violation of public procurement procedures. It submits further that she attempted to purchase institutional assets for personal use, and returning them only after facing scrutiny.
46. The Respondent submits that the Claimant bypassed mandatory procurement requirements, including competitive bidding and proper valuation, and documented the transaction informally through handwritten notes, rather than proper procurement forms. That her belated return of the tyres after the allegations were made, does not absolve her of the initial misconduct, nor does it negate the potential under valuation of the assets suggested by her initial offer of Kshs.3000/-.
47. The 1st Respondent submits that in acquiring a mortgage facility of Kshs. 1,860,000.00, the Claimant manipulated procedural controls. That she obtained approvals through informal channels instead of following the prescribed mortgage committee review process, and that the approval chain reveals concerning gaps in standard operating procedures, suggesting she exploited her position for personal benefit. The Respondent had reliance in the case of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited (2014) eKLR* to support its assertion that it had valid reasons to terminate the Claimant.
48. The 1st Respondent further submits that the Claimant's conduct violated multiple provisions of the Public Officers Ethics Act and Code of Conduct, of particular note is her disregard for Clause 18 of the Code, which mandates that officers "refrain from trading with the government" to prevent exploitation of office, and which actions the Respondent submits rendered her unfit to hold a public office.
49. The Respondent submits that it followed proper procedure in the dismissal process, having issued a detailed Show Cause letter and clearly explaining the allegations. It submits further that they granted the Claimant opportunities to present her case during the Ad Hoc Committee hearings.
50. It is submitted that the Respondent had a valid and fair reason for the dismissal, and it respectfully urges that this Court adopts the position that the dismissal was both justified and equitable under the circumstances. It sought to rely in the case of *Albert Mutekhele Maunda v Postal Corporation of Kenya [2019] eKLR* to buttress this assertion.
51. It is submitted that the Claimant's acknowledgment of the dismissal letter raising no procedural objections and did not utilize the available internal appeal processes, strongly suggests that she implicitly accepted the fairness of the process.



52. The Respondent submits that it paid the Claimant one month's basic salary in lieu of notice, along with all terminal benefits as per her Terms and Conditions of Service, subject only to lawful deductions for amounts owed to the institution.
53. The Respondent submits that the Claimant has spectacularly failed to prove on a balance of probabilities that his summary dismissal was not for a valid reason, while on its part, it has proven that it upheld procedural fairness in processing the Claimant's termination.
54. The 1st Respondent prays that the Claimant's claim be dismissed with costs.

Analysis and Determination

55. Upon careful consideration of the pleadings herein, the witnesses' oral testimonies and the rival submissions, the issues that present for determination are:
 - i. Whether the Claimant was unfairly dismissed; and
 - ii. Whether she is entitled to the remedies sought.

Whether the Claimant was unfairly dismissed

56. For a termination/dismissal to be considered fair, the employer must adhere to the tenets of fair procedure set out under Section 41 of the Employment, read with Section 4 of the Fair Administrative Actions Act and Article 47 of *the Constitution*. The law further demands that an employer proves substantive justification for the dismissal in accordance with Sections 43, 45 and 47(5) of the *Employment Act*, 2007.
57. Section 41 of the *Employment Act*, obligates an employer, before terminating/dismissing an employee on the ground of misconduct, poor performance or physical incapacity, explains to the employee in a language the employee understands, the reasons for which the employer is considering termination.
58. The Claimant's case is that she was placed on suspension from 26th April, 2013 and later summarily dismissed from the service of the Respondent on 5th February, 2014. Although the Claimant admitted that she was accorded a fair opportunity to defend herself, she contends that she was subjected to an unjustified prolonged suspension of 10 months without any explanation.
59. The Claimant was issued a notice to show cause letter dated 25th March, 2013, which she responded to vide her letter dated 4th April, 2013. The Respondent's position is that upon review of the Claimant's said response to the show cause, it became necessary to place her on suspension to allow for investigation on the issues raised against her, and hence the suspension letter issued to the Claimant dated 26th April, 2013. The letter indicated that the Claimant was suspended on half pay, but did not indicate the suspension period.
60. Suspension is an administrative tool available to the employer where there is need to protect the employer's legitimate business interests and should only be resorted to sparingly. In the case of Prof. Ezekiel Kiprop & 8 Others v. University of Eldoret, (2015) eKLR, the court held that there must exist a statutory or contractual authority which empowers an employer to suspend an employee, and absence of such authority, unilateral suspension amounts to an unfair labour practice.
61. In the case of Francis Magenda Kionga v. Kenya Revenue Authority (2012)eKLR, the Court held that where an employer sets a definite period of suspension as per Regulation or contract, the deadlines must be observed and any extension explained to the employee in writing.



62. Clause 3.3 of the 1st Respondent's terms and conditions of service provides thus on suspension:-
- “Staff may be placed under suspension on half pay in the following circumstances: -In instances of suspected gross misconduct where the investigations are not completeIn cases where it has been established that the staff has been involved in a fraudulent activity pending further investigations/court ruling.”
63. From the foregoing, it is evident that the timeline for suspension is not set under the Respondent's Policy. Further, the 1st Respondent told court that the reasons for the prolonged suspension were due to the complexity of investigating procurement irregularities across multiple departments; the need to protect institutional assets and records during the investigation; the senior position held by the Claimant, which in their view, required a comprehensive review and the necessity of thorough documentation and verification of the findings.
64. It is my considered view that the Respondent has sufficiently explained the reason for the Claimant's long suspension, especially considering the number of issues raised against her, and which the 1st Respondent needed to ascertain through investigation. I in the premise, find the Claimant's dismissal procedurally fair.
65. On the second limb, Section 43 of the Employment Act, obligates an employer to establish a fair, valid and justified reason that would cause a reasonable employer to terminate/dismiss an employee as to render the dismissal or termination fair.
66. The reason(s) for termination/dismissal have generally been agreed to be matters the employer at the time of termination/dismissal, genuinely believed to exist, and which caused the employer to terminate the employee.
67. It is settled that the reason(s) for dismissal/termination must flow from the pre-termination events, meaning that termination must be premised on the grounds in the show cause, invitation and the investigation report if any.
68. The Claimant's position is that the 1st Respondent dismissed her from service without valid and justified grounds. Section 43 of the Employment Act states thus on reasons for termination: -
- “(1) In any claim arising out of termination of a 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 a 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.”
69. In the case of 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.”
70. Various charges were levelled against the Claimant. However, upon investigation, she was only required to respond to three issues during the hearing, which were Conflict of interest in the case of Marafiki



Safaris Limited, Disposal of idle assets without following the public procurement disposal procedures; and irregular acquisition of a Mortgage facility of Kshs. 1,860,000/ =.

71. The Claimant in an internal memo dated 7th December, 2012, to the Ag. Chief Executive of the 1st Respondent, confirmed having ‘taken upon herself’ to take away tyres which she contends she paid Kshs. 15,000/- for, and which purchase she says was receipted. The Claimant vide the same memo tendered her resignation as the Chairperson of the Procurement committee, Disposal committee and as member of the tender committee.
72. By the Claimant’s own admission in the memo referred to herein above, she no doubt held a strategic position in the 1st Respondent’s procurement process. Being the Chairperson of the Procurement committee, Disposal committee and a member of the tender committee, meant that she would easily influence procurement and disposal decisions at every stage.
73. Further, the Claimant admitted that she, together with her sister, were the shareholders of Marafiki Tours, a company that was in her own words, awarded tenders worth Eight Million shillings by the 1st Respondent, where she chaired the procurement and tender committees.
74. By dint of the Claimant’s conduct, it would in my view not be far fetched for the 1st Respondent to consider the Claimant as having consistently favoured Marafiki Safaris over other providers, in gross violation of the Public Procurement and Disposal Act. Her actions in taking upon herself, as she says, to purchase the 1st Respondent’s assets without showing that procurement and disposal laws were adhered to, further demonstrates a glaring conflict of interest and a lack of transparency and fairness in the procurement process.
75. In *British Leyland UK Ltd v Swift* (1981) I.R.L.R 91 Lord Denning had this to say on what constitutes fair reason to dismiss:-

“The correct test is; was it reasonable for the employers 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 quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him.”

76. In the circumstances of this case, I reach the conclusion that the 1st Respondent had valid, fair and justified reasons, under Sections 43, 45 and 47 of the *Employment Act*, to dismiss the Claimant. The dismissal was thus both procedurally and substantively fair and lawful and so I hold.

Whether the Claimant is entitled to the remedies sought

77. The Claimant’s claim is for a declaration that her termination by the Respondent by the letter of 5th February 2014 was unfair, an award of Kshs.3,308,880.00 being 12 months compensation for loss of employment, Severance pay of 15 days for every year worked. (Kshs. 2,619,530.00) and Salary for the months between April 2013- February 2014.
78. The first two claims collapse on the finding that the Claimant’s dismissal was fair and lawful. On the claim for payment of severance pay, severance pay is only payable where an employee is terminated on account of redundancy. The Claimant herein, was summarily dismissed on the ground of gross misconduct, hence is not entitled to payment of severance pay. This claim thus equally fails.



79. On the claim for salary for the months of April, 2013 to February, 2014, the Claimant admitted on cross-examination that the 1st Respondent paid her all her terminal dues at dismissal, amounting to Kshs.4,016,973/- which she confirmed included her 50% withheld salary for the period she was on suspension. This claim is thus declined on this account.

80. In the end, I proceed to dismiss the Claimant's claim with costs to the 1st Respondent.

81. Judgment accordingly.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

C. N. BAARI

JUDGE

Appearance:

Ms. Mululu h/b for Mrs. Kananu for the Claimant

Ms. Wagasa present for the 1st Respondent

N/A for the 2nd Respondent

Ms. Esther S. – CA

