



**Mageto v Kenya Revenue Authority (Cause E714 of 2023)
[2025] KEELRC 1063 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1063 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E714 OF 2023**

**S RADIDO, J
APRIL 3, 2025**

BETWEEN

MARGARET NYABOKE MAGETO CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. Margaret Nyaboke Mageto (the Claimant) sued the Kenya Revenue Authority (the Respondent) on 1 September 2023, alleging unfair termination of employment.
2. The Respondent filed a Statement of Response on 5 October 2023, and the Cause was heard on 4 November 2024, 15 January 2025 and 29 January 2025.
3. The Claimant and 2 Human Resource Managers with the Respondent testified.
4. The Claimant filed her submissions on 11 February 2025, and the Respondent on 25 February 2025.
5. The Claimant set out the Issues for determination as:
 - i. Whether the Respondent unfairly terminated the Claimant's employment?
 - ii. Whether the Claimant is entitled to the remedies sought?
6. The Respondent adopted the Issues as set out by the Claimant in her submissions.
7. The Court has considered the pleadings, evidence and submissions.



Unfair termination of employment

Procedural fairness

8. The Respondent issued a show cause dated 5 November 2021 to the Claimant, and the ground for the show cause was negligence of duty (poor performance).
9. The show cause requested the Claimant to respond within 7 days. The Claimant responded on 22 November 2021.
10. On 29 November 2021, the Respondent invited the Claimant to attend an in-person disciplinary hearing on 7 December 2021. The invitation informed the Claimant of the right to attend the hearing with a colleague of her choice.
11. The Claimant attended the hearing.
12. The Respondent was not satisfied with the Claimant's explanations and issued a termination letter dated 3 February 2022.
13. The termination letter advised the Claimant of a right of appeal, and she appealed on 25 February 2022. The appeal did not succeed, and the Respondent informed the Claimant as much.
14. The Claimant contested the fairness of the process leading to the termination of her employment on the grounds that the grounds of her appeal were not considered, and that the decision on appeal took more than 3 months to be released contrary to the Respondent's Code of Conduct.
15. The Claimant was made aware of the allegations to confront and requested to make a written response. The Respondent also granted her an opportunity to make representations during an oral hearing. She was informed of the right to be accompanied.
16. After dismissal, the Claimant appealed, and the Respondent rejected the appeal. It was up to the Respondent to weigh the strength of the appeal, and the Court cannot review the factors it used to weigh the strength of the appeal.
17. The wrongful act or injury suffered by the Claimant occurred upon the termination of employment, and the mere fact that the appeal was not successful or rendered within 3 months would not have changed the facts.
18. The Court is satisfied that the Respondent complied with the requirements of procedural fairness as set out in sections 35(1) and 41 of the *Employment Act*, 2007.

Substantive fairness

19. Sections 43 and 45 of the *Employment Act*, 2007, place a burden on the employer to prove the validity and fairness of the reasons for terminating an employment contract.
20. The reasons given by the Respondent for terminating the Claimant's employment were:
acted/performed your work improperly, leading to poor performance, which is negligence of duty on your part. The stated malpractice is supported by the fact that you awarded yourself a performance score of 95.20% for your end-of-financial Year 2020/2021 self-assessment. However, upon review of the same by your department and moderation/validation by the Performance Management Division, your overall performance was rated at 84.52% based on the following areas where you performed poorly.



- (1) Failure to fully implement the Port Charter initiatives, where you indicated to have scored 17% on uptake of only one of them – the Pre-Arrival Processing program, against the corporate target of 22%.
- (2) Further, you did not provide evidence to prove that you monitored and reported the implementation status on Port Charter initiatives on a monthly basis as per your Performance Contract.
- (3) Lack of proof on review of Section’s procedure manuals where you did not adduce evidence that they were reviewed.
- (4) Failure to enforce compliance with Leave Policy, since no evidence adduced to prove that the leave schedules were fully adhered to.

The score indicated here above (84.52%) which you uploaded in the isupport system is below the minimum expected performance threshold of 90% rating and therefore you failed to improve on your overall performance for the entire review period despite being on Performance Improvement Plan (PIP) from 1st February 2020 up to 30th June 2020 (five (5) months) as per letter Ref: Conf/5826 (52) dated 27th January 2020 – a PIP that was never vacated.

21. These were the reasons the Respondent was expected to prove as valid and fair. The Respondent called 2 witnesses in an endeavour to discharge the burden placed on it.
22. The Respondent had in place a performance appraisal system. The evaluation year runs from 1 July to 30 June of the next year, and the evaluation is conducted quarterly.
23. On or around 27 January 2020, the Respondent placed the Claimant on a Performance Improvement Plan for 5 months starting from 1 February 2020. This was based on the Claimant’s stated poor performance.
24. Logically, this must have been performance for the period 1 July 2019 to 30 June 2020.
25. The notification informed the Claimant that her performance would be evaluated and validated after the 5 months, and that failure to meet the set targets could lead to disciplinary action.
26. On or around 19 May 2020, the Respondent redeployed the Claimant from Post Clearance Audit, Risk Management Division to Trade Facilitation within Customs & Border Control.
27. In terms of the letter dated 27 January 2020, the Claimant’s Performance Improvement Plan was to lapse on 30 June 2020 with an evaluation and validation.
28. The Respondent did not place any material before the Court that the Claimant’s performance during the Performance Improvement Plan period of 1 February 2020 to 30 June 2020 was ever evaluated or validated to confirm whether she had met the set targets.
29. The Respondent also did not place any formal record before the Court that the Performance Improvement Plan was extended.
30. The parties contested whether the Performance Improvement Plan which commenced in February 2020 was relevant to the termination of the Claimant’s employment.
31. The Court finds that the Performance Improvement Plan related to the financial year 2019 – 2020, and that since it lapsed on 30 June 2020 without any positive or negative action/decision from the Respondent to evaluate whether the Claimant had met the targets therein, the benefit of doubt must be given to the Claimant that she successfully completed the Plan.



32. It is also instructive that the Claimant was deployed from her then responsibilities to new ones in Trade Facilitation, and this must have necessitated the setting of new targets, the earlier targets being redundant by the redeployment.
33. The reasons given by the Respondent for terminating the Claimant's employment related to the financial years 2020 – 2021.
34. The Claimant's performance for the 1st quarter, July 2020 to September 2020, was conducted by the immediate Supervisor, Mr Peter Nganga and reviewed by Pamela Ahago.
35. The Claimant was given a rating of 90.66%. On 24 November 2020, the Respondent informed the Claimant that she had met the expected threshold.
36. For the second quarter (review period indicated as from 1 July 2020 to 31 December 2020), the Claimant was evaluated and reviewed by her supervisor, Pamela Ahago, on 5 February 2021. The Claimant was rated 94.40%.
37. The parties did not produce in Court the Claimant's evaluation records for the third quarter, 1 January 2021 to 30 March 2021 or the fourth quarter, 1 April 2021 to 30 June 2021.
38. However, the Claimant produced her 2020 – 2021 End year appraisal (1 July 2020 – 30 June 2021). The immediate supervisor and reviewer was Lilian Nyawanda. The Claimant's self-assessed her score at 95.20%. The Respondent moderated or validated the score to 84.52%.
39. On 5 November 2021, the Deputy Commissioner, Performance Management Division, sent a Memo to the Deputy Commissioner, Human Resources, indicating that the Claimant had achieved a score of 84.52% during the 2020- 2021 end-year evaluation, and that the score did not meet the expected threshold.
40. The Deputy Commissioner, Performance Management Division, requested the Deputy Commissioner, Human Resources, to initiate appropriate administrative action, and a show cause notice was issued to the Claimant on the same day.
41. In the response to the show cause, the Claimant categorically asserted that she was not involved in the moderation/validation exercise and that this was contrary to the Respondent's Policies.
42. The Claimant further informed the Respondent in the response that though she attended a meeting on 14 October 2021 to validate her performance, the meeting was adjourned after she raised certain concerns with the Panel comprising Joseph Kaguru, Edward Njoroge, Teresia Atemo and Stephen Mwaniki.
43. The Claimant stated that the Panel advised her they would call her for another session to conclude the validation exercise after consulting with the wider Performance Management Division.
44. The Court has also looked at the Performance Appraisal template produced in Court by the Respondent. It has provision for the names and signatures of the validators and the date of the validation. It has no names, signatures or dates. This would have verified that a validation exercise was carried out.
45. Further, the Respondent did not call any of the members of the Panel to deny the Claimant's assertions that the validation exercise was not concluded.



46. The evidence on record corroborates the Claimant's testimony that the validation of her performance was not conducted in terms of the Respondent's Guidelines to support the contention of poor performance.
47. The Claimant also contended that during the signing of the Performance Contract for 2020 – 2021, it was agreed that if she achieved a score above 70%, she would have met her objectives and targets.
48. As part of the Respondent's performance appraisal process, the Claimant signed a Performance Contract. The contract had the following parameters:
49. Rating Performance
Excellent performance Must have achieved a total score of 130% to 200% of their objectives
Very good performance Must have achieved a total score of 100% to less than 130% of their objectives
Good performance Must have achieved a total score of 70% to less than 100% of their objectives
Fair performance Must have achieved a total score of 50% to less than 70% of their objectives
Poor expectations Must have achieved a total score of 0% to less than 50% of their objectives
50. The Respondent maintained through its witnesses that the score of 84.52% was below the minimum expected performance of 90%. The Respondent relied on a Newsflash article from May 2021 to back up the 90% threshold.
51. The Claimant's contract and which was duly executed was explicit on the ratings and performance indicators, and the threshold of 90% as being the minimum was not part of the equation.
52. In fact, according to the signed contract, the Claimant's validated score of 84.52% fell under the category of good performance. The Guidelines did not provide that a good performance would be subjected to disciplinary action or termination of employment.
53. And if at all the contract were to be subordinated to the Guidelines on Performance for the financial year 2020 -2021, the Claimant should have been placed on Performance Watch, and not disciplinary action.
54. The Court can conclude that the Respondent did not prove valid and fair reasons to terminate the Claimant's employment.

Appropriate remedies

55. The substantive remedies sought by the Claimant was reinstatement and, in the alternative, compensation for unlawful termination.
56. Reinstatement should be granted in exceptional circumstances. The Claimant did not bring out the exceptional circumstances in the pleadings or evidence.
57. The Claimant served the Respondent for about 20 years, and factoring in the length of service, the Court is of the view that compensation equivalent to 10 months' gross wages would be appropriate (gross salary at time of separation was Kshs 593,000/-).

Orders

58. The Court finds and declares that the termination of the Claimant's employment was unfair and awards her:



- (i) Compensation Kshs 5,930,000/-
59. The Respondent to issue a Certificate of Service to the Claimant within 21 days.
60. The award to attract interest at court rates from the date of judgment.
61. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 3RD DAY OF APRIL 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant SMS Advocates LLP

For Respondent Chelegat Mutai, Advocate

Court Assistant Wangu

