



**Omillo v University of Eldoret (Employment and Labour Relations Cause E003 of 2023) [2025] KEELRC 1655 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1655 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E003 OF 2023  
MA ONYANGO, J  
MAY 29, 2025**

**BETWEEN**

**DR FRANCIS OKUMU OMILLO ..... CLAIMANT**

**AND**

**UNIVERSITY OF ELDORET ..... RESPONDENT**

**JUDGMENT**

1. Vide his Amended Memorandum of Claim filed in Court on 25<sup>th</sup> January, 2024 the Claimant seeks the following reliefs: -
  - a. A declaration that his dismissal from employment was unlawful, un-procedural and unfair.
  - b. Compensation for unlawful, un-procedural and unfair termination from employment as prayed for in the statement of claim
  - c. A declaration that the claimant is entitled to be unconditionally released or cleared by the respondent.
  - d. Damages for losses incurred due to failure to be released or cleared by the Respondent.
  - e. Costs of this suit and interest at court rates from time of filing this suit until payment in full.
  - f. A certificate of service as per section 51 of the *Employment Act*.
  - g. Any other relief that the Honourable Court may deem fit and just to grant
  - h. In the alternative and/or addition to the afore-stated reliefs prayed for, the Claimant prays for a declaration that his dismissal from employment was unlawful, un-procedural and unfair, and that he should be reinstated back into employment, forthwith.



2. The Claimant's case is that he was appointed as a lecturer by the Respondent on 22<sup>nd</sup> January 2018 in the department of Business and Management Sciences (Entrepreneurship Option) on permanent and pensionable terms effective 1<sup>st</sup> December 2017.
3. The Claimant contends that he served the Respondent with devotion, diligence and dedication until August 2021 when he was served with a show cause letter dated 18<sup>th</sup> August 2021 on allegations that he had violated ICT resources access guidelines among other allegations.
4. It is his case that he was later invited to a staff disciplinary committee meeting held on 21/ 12/2021, which he attended with counsel. However, he faulted the hearing held by the staff disciplinary committee on the following grounds:-
  - a. The charge sheets inviting him to appear before the staff disciplinary committee dated 10/12/2021, did not have any specific offences leveled against him and only stated that he had flouted a number of policies between 16/2/2021 to 17/6/2021.
  - b. Due to the above reason, the claimant was not able to adequately prepare a proper and/or direct defence.
  - c. The claimant was ambushed at the staff disciplinary committee hearing with a list of irregularly entered marks.
  - d. The above stated list of irregularly awarded marks were not accompanied by intended beneficiaries, complainants and/or Corroborating evidence to ascertain the veracity of the charges being leveled against the claimant and to determine whether they were done/ conducted by him.
  - e. Due to the reasons stated under paragraphs (c) and (d) above, the claimant was not able to prepare a suitable defence to the charges being levelled against him.
5. The Claimant states that despite putting up a spirited defence against the charges leveled against him and the glaring disregard for his right to a fair trial, the committee resolved to summarily dismiss him from service.
6. The Claimant further asserts that being aggrieved by that decision, he appealed vide a memorandum of appeal against the decision of the staff disciplinary committee but the decision to dismiss him from service was upheld in June,2022. According to the Claimant, the appeal decision was flawed and ill-informed on grounds that:-
  - a. Though the communication for summary dismissal allowed the claimant chance to appeal, it denied him access to actual charges, minutes and ruling that informed the decision and thus curtailed the claimant's ability to raise an adequate and reasoned appeal contrary to Article 47 (2) of *the Constitution*.
  - b. The long process spanning over a period commencing on 2/7/2021 to 4/1/2022, was protracted and lengthy, and thus denied the claimant his right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
7. It is the Claimant's position that due process was not followed and as such, his termination from employment was not in accordance with fair procedure. He maintains that he never engaged in any unethical work practices and that his dismissal without a reason or warning was unreasonable and without any justifiable cause. As a consequence, the Claimant asserts that his dismissal was illegal,



unfair and unlawful as it violated the provisions of section 41(1), 44(4), 43,20 and 45(2) of the Employment Act.

8. The Claimant therefore sought to be paid his terminal benefits which he particularized as hereunder:-
  - i. One month's pay in lieu of notice.....Kshs 214,389
  - ii. Service pay.....Kshs 428,778
  - iii. Compensation for unfair termination.....Kshs 2,572,668Total.....Kshs 3,215,835
9. The Claimant further avers that the Respondent has subjected him to pecuniary embarrassment and harsh financial conditions by unfairly, unlawfully and unreasonably denying to clear him to his disadvantage and detriment.
10. The Claimant states that he is entitled to damages for losses incurred by the failure to be released or cleared by the Respondent
11. In response, the Respondent filed an Amended Statement of Defence dated 3<sup>rd</sup> May 2024 wherein it denied the averment by the Claimant that he was unfairly and unlawfully terminated from employment. The Respondent avers that that the Claimant was procedurally and legally dismissed from service in that the dismissal was in accordance with the University of Eldoret Human Recourse Policies and Procedures Manual,2018, various rules and regulations, policy instruments and relevant CBAs in force. In this regard, the Respondent contends that the Claimant was availed reasonable opportunity to dispute the allegations and was availed reasonable opportunity to dispute the allegations. It is averred that the Claimant was afforded an opportunity to be represented by counsel at the disciplinary hearing conducted on 21<sup>st</sup> December 2021 and on the appeal hearing held on 28<sup>th</sup> June 2022.
12. The Respondent further denied the allegation that it had declined to clear the Claimant and contended that he was cleared and a letter of clearance addressed to him sent via email on 24<sup>th</sup> February 2024 at 5:23pm hence he was free and at liberty to search for employment elsewhere.
13. With regard to the Claimant's prayer for reinstatement, the Respondent asserts that it is impractical in lieu of the long passage of time coupled with the changes including re-organization and rationalization of staff by the Respondent.
14. In the end, the Respondent urged the court to dismiss the Claimant's claim with costs.
15. The matter was heard on various dates. The Claimant testified on 6<sup>th</sup> May 2024 as CW1 and adopted his witness statement recorded on 13<sup>th</sup> February 2023 as his evidence in chief. He also relied on the documents he filed in court with his Statement of Claim in support of his case.
16. By and large, the Claimant in his testimony reiterated the averments in his Amended Memorandum of Claim. In addition, the Claimant told the court that the disciplinary committee was not properly constituted as stipulated by clause 11.15.2 of the Respondent's Human Resource Manual. According to the Claimant, as a lecturer in scale 12 cadre, the Vice Chancellor was required to chair the Ad Hoc Council hearing but in his case the Deputy Vice Chancellor chaired the meeting.
17. He also stated that as per 11.8 of the Human Resource Manual, the disciplinary process should take a maximum of 90 days that his disciplinary process took 6 months from the time he was suspended to the time he was summarily dismissed.



18. Further, the Claimant averred that clause 11.9 of the Human Resource Manual provides that the appeal committee shall be convened within 21 days but in his case it took 152 days from the time he appealed.
19. The Claimant therefore sought to be compensated for the unfair termination and for payment his terminal dues. He also sought for an order to reinstate him to his employment.
20. On cross-examination, the Claimant acknowledged that he was aware that the University Council, which was mandated to consider his appeal, was not in place for over a year during his disciplinary process. He also stated that he was paid during the period he was on suspension. With regard to the allegations made in the investigation report, the Claimant stated that at the disciplinary hearing, he stated that he mistakenly entered the marks but did not accept culpability.
21. On re-examination, the Claimant stated that the person adversely mentioned in the report was a Mr. Johnstone and that the show cause letter issued to him did not mention the allegation of alteration of marks.
22. On its part, the Respondent called Francis Omete Ikapel its Registrar, Administration who testified as RW1. He adopted his witness statement recorded on 23<sup>rd</sup> May 2023 as his evidence in chief. He also relied on the documents filed by the Respondent in its list of documents dated 8<sup>th</sup> June 2023.
23. In his testimony, RW1 stated that the Claimant was accorded a fair hearing by the disciplinary committee and also by the Ad Hoc Council on the appeal. It was his evidence that the Claimant's appeal was not determined within the stipulated period as the term of the Council had lapsed and it was not possible to have any other organ deal with the Claimant's appeal.
24. RW1 testified that investigations were done into the allegations levelled against the Claimant and that the investigation report formed the basis of the decision by the disciplinary committee.
25. The Respondent's witness stated that the disciplinary committee was to be chaired by the Deputy Vice Chancellor which function was delegated to him by the Vice Chancellor.
26. On cross-examination, RW1 stated that the Claimant was terminated from employment after investigations were done and it was found that he altered students' marks. RW1 stated that although the notice to show cause referred to a breach of policy and did not specifically mention alteration of marks, alteration of marks was a breach of policy. RW1 confirmed that the disciplinary meeting was chaired by the Deputy Vice Chancellor as provided by the Human Resource Manual.
27. RW1 stated that the log files were in the Investigation Report. He also stated that the Claimant in his Memorandum of Appeal complained that the charge sheet did not have proper particulars for him to respond to the offences.
28. On re-examination, the Respondent's witness stated that the Claimant was granted rights to log into the ERP and that it was established that he logged into the system. RW1 also stated that members of the disciplinary committee had prior access to the logs and that the logs were projected at the disciplinary hearing.

### **Claimant's Submissions.**

29. In his submissions filed on 8<sup>th</sup> August 2024, the Claimant identified the issues for determination to be:
  - i. Whether there were valid reasons for terminating the Claimant's employment



- ii. Whether the Claimant was accorded a fair hearing prior to the termination of the Claimant's employment
  - iii. Whether the Claimant is entitled to the reliefs sought
  - iv. Who bears the cost of the suit
30. On the issue whether there were valid reasons for the termination of the Claimant from employment, it was submitted for the Claimant that from his evidence and that of RW1, he was not warned of the particulars of charges prior to being served with the charge sheet inviting him to appear before the staff disciplinary committee. He also stated that at the hearing, he was ambushed with a list of irregularly entered marks without any evidence to ascertain the veracity of the charges and thus he was not able to prepare a suitable defence. The Claimant therefore submitted that he was terminated from employment without a valid reason
  31. On the second issue, the Claimant submitted that the charge sheet served on him did not have specific offences leveled against him so that he could prepare a proper defence. It was also the Claimant's submission that RW1 also confirmed that the Claimant's appeal took long unlike its statutory limit which is within 21 days from the date of the receipt of memorandum of appeal thus denying the Claimant his right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. According to the Claimant, RW1 also confirmed that during the disciplinary meeting there was only a list of irregularly entered marks which were not accompanied by corroborating evidence to ascertain the veracity of the charges and thus he was unable to prepare a suitable defence. The Claimant therefore submitted that his termination from employment by the Respondent was unfair and unprocedural.
  32. On the issue whether the Claimant is entitled to the reliefs sought, the Claimant submitted that having proved that he was terminated unfairly and unprocedurally, he is entitled to the prayers he sought in his Amended Memorandum of Claim.
  33. On the prayer for service pay, the Claimant submitted that the Respondent presented no proof that the NSSF was being paid which clearly shows that the Claimant was not enrolled in any NSSF scheme during his employment period and was thus entitled to the award of service pay.
  34. On his claim for 12 months' compensation for unfair termination, the Claimant submitted that he was unfairly terminated and thus is entitled to this prayer.
  35. On the prayer for certificate of service, the Claimant submitted that there existed an employer employee relationship between himself and Respondent for more than three consecutive years and for that reason, he has a right to obtain a certificate of service as provided by law.
  36. Lastly on who should bear the costs, the Claimant submitted that he has clearly shown that not only was there no valid reasons for the termination of his employment but also the Respondent failed in its constitutional and statutory duty to give a fair hearing. The Claimant thus submitted that he had proved his case against the Respondent and entitled to the award of costs of the suit.

#### **The Respondent's submissions.**

37. In its submissions, the Respondent contended that at the Appeal hearing held on the 28<sup>th</sup> June, 2022, the Claimant admitted to the offence and sought lenient finding.
38. The Respondent further submitted that the Claimant was accorded a chance to provide witnesses or a representative of his/her choice during the hearing, the communication of the decision to terminate



the Claimant was done with sufficient clarity and that the Claimant was issued with a termination notice that clearly depicts the reasons for the termination.

39. While submitting on the relevance of the investigating report, the Respondent cited the case of South African Sports Confederation and Olympic Committee (SASCOC) v Commission for Conciliation, Mediation and Arbitration and Others (JR 2642/2019) [2021] ZALCJHB 23 to buttress the point that the investigation report was entirely irrelevant to the issue of the fairness of the Claimant's dismissal, particularly given that it was not used in the disciplinary enquiry and would not be relied on by the employer in the proceedings. The Respondent submitted that the only basis for the investigation report was to inform the Claimant and the Respondent of the charges.
40. On the prayer for reinstatement by the Claimant, the Respondent urged the court to decline this prayer on the basis that the Claimant has not demonstrated any special circumstances to warrant an order for specific performance of the Claimant's contract of service and neither did he demonstrate the practicability of the reinstatement in the face of the acrimonious separation as required under section 49(4) of the *Employment Act*.
41. In the end, the Respondent submitted that that the instant claim by the Claimant is misconceived as the allegations made by the Claimant are baseless and unsupported with evidence. The court was urged to dismiss the suit with costs.

### **Determination**

42. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are : -
- i. Whether the termination of the Claimant's employment was justified.
  - ii. Whether the procedure followed was in accordance with the *Employment Act*.
  - iii. Whether the reliefs sought are merited

### **Whether the termination of the Claimant's employment was justified.**

43. Section 45(2) of the *Employment Act* prohibits an employer from termination the contract of an employee except for valid reason and upon compliance with fair procedure.
44. The Claimant was suspended and subsequently terminated from employment on the allegation that he altered students' marks. The Respondent's witness, RW1 in his testimony stated that the Claimant had been given access to the log in to the EPR system which he used to alter the marks of some students.
45. The Claimant on the other hand denied altering the students' marks and averred that the investigation report which was the basis of his termination did in fact mention one Mr. Johnstone adversely and not him. Further the Claimant raised an issue with the reasons given for his termination alleging that the grounds in the show cause letter issued to him were totally different from the issues raised during the disciplinary hearing.
46. The show cause letter issued to the Claimant is reproduced as hereunder:

Ref: PF/No. 1460(22) Date: 18<sup>th</sup> August, 2021

Box 134-50410

Port Victoria



Dear Dr. Omillo

SHOW CAUSE

The above captioned subject matter refers

Further to our letters Ref. Pf/No. 1460 (20&21) dated 2<sup>nd</sup> July 2021 and 30<sup>th</sup> July 2021 respectively and after due consideration of the investigation reports received, he noted that while employed as a Lecturer, Grade 12 in the department of Business Management, School of Business and Management Sciences you breached the terms of service between 16<sup>th</sup> February 2021 and 17<sup>th</sup> June 2021 as indicated below:

PARA 1.

Violation of ICT resources access guidelines and intentionally and/or deliberately misused data /information contrary to the UoE Information & Communication

PARA 2.

You breached the following University Policy instruments which apply to you:

SUBPARA a.

articles 2.3(b) and 2.5(d) of the U.O.E Code of Conduct and Ethics Policy,2014

SUBPARA b.

sections 4.8 and 12.5 of the U.O.E Information & Communication Technology Policy 2014

SUBPARA c.

sections 11.4(y) and 11.7(c) of the UOE Human Resource Policies and Procedures Manual 2018

SUBPARA d.

section 14(f) of the Public Service Code of Conduct and Ethics, 2016.

Given the above, you are required to explain the circumstances under which you committed the above offences and SHOW CAUSE why disciplinary action should not be taken against you.

Your response to these allegations should reach the undersigned within fourteen (14) days from the date of this letter.

Please note that failure to respond within the stated period shall mean you do not have any defence and the intended disciplinary action shall be taken against you without further reference.

Yours sincerely,

Signed

Prof Teresia O. Akenga, MRS, MBS,MBA

Vice Chancellor

47. The minutes of the disciplinary hearing held on 21<sup>st</sup> December 2021 indicate that the Claimant was heard on the charge of breaching the terms of service contrary to the University of Eldoret Policy Instruments being articles 2.3(b) and 2.5(d) of the U.O.E Code of Conduct and Ethics Policy,2014; sections 4.8 and 12.5 of the U.O.E Information & Communication Technology Policy 2014; sections



- 11.4(y) and 11.7(c) of the UOE Human Resource Policies and Procedures Manual 2018 , and section 14(f) of the Public Service Code of Conduct and Ethics, 2016.
48. The particulars were that between 16<sup>th</sup> February 2021 and 17<sup>th</sup> June 2021, while employed as a Lecturer, Grade 12 in the Department of the Business Management, School of Business and Management Sciences, Dr Omillo violated ICT resources access guidelines and intentionally and/or deliberately misused data contrary to the U.O.E Information & Communication Technology Policy, 2014.
49. Subsequently, the Claimant was issued with a summary dismissal letter dated 4<sup>th</sup> January 2022 where it was stated that he was being summarily dismissed on account of gross misconduct for violating the various university policy instruments.
50. RW1 during cross-examination admitted that the show cause letter issued to the Claimant was grounded on the allegation of breach of policy and did not specifically mention alteration of marks.
51. I have evaluated the facts of this case at length. From the show cause letter which initiated the Claimant’s disciplinary process, it is clear that the Claimant was accused of a general issue breach of policy without mention of the specific acts that constituted the breach. The offence of alteration of students marks was raised by the Director of ICT at the disciplinary hearing. The Claimant was not given a copy of the investigation report to enable him address the specific charges against him. As can be seen in the Claimant’s Memorandum of Appeal to the Ad Hoc Council, the Claimant raised pertinent issues regarding the grounds given for his dismissal alleging that the accusation of altering students’ marks was not corroborated. No evidence was placed before court to confirm whether the Ad Hoc Council considered the issues raised by the Claimant in his appeal.
52. Having regard to this sequence of events, it is difficult to see how the Disciplinary Panel reached the conclusion that it is the Claimant who altered the students’ marks. In any case, he appeared for the disciplinary hearing ready to defend himself based on the issues raised in the show cause letter only for the allegation that he altered students’ marks to be raised.
53. In my view, the Respondent’s action of generalizing the offence in the Notice to show cause as ‘violating ICT resources and breaching policy instruments’ to introduction a charge of ‘alteration of students’ marks’ which was the main offence at the disciplinary hearing leaves the doubts as to what exactly the Claimant was accused of. The evidence that is available does not provide a basis for such a conclusion that the Claimant was indeed found guilty of the offence of breaching policy instruments as alleged in the show cause letter.
54. Section 43 of the *Employment Act* provides that in a claim arising out of termination of contract of employment 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 be unfair within the meaning of section 45(2) of the Act
55. In this case, the Respondent did not discharge the burden of proving that it dismissed the Claimant for a valid and fair reason. Consequently, on that ground alone, the dismissal was unfair within the provision of section 45 of the Act.
56. On the second issue regarding procedural fairness, Section 41 of the *Employment Act* provides: -
- “Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer



is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”

57. In his claim, the Claimant has faulted the disciplinary process against him alleging that the Respondent did not comply with the timelines provided for in its Human Resource manuals and also, that the show cause letter issued to him generalized the accusations against him making it impossible for him to defend himself effectively at the disciplinary hearing which hearing focused on the allegation that he had altered students marks.
58. The Claimant’s unrebutted evidence was that clause 11.8 of the Human Resource manual provides that the disciplinary process should take a maximum of 90 days but in his case, the disciplinary process took 6 months from the time he was suspended to the time he was summarily dismissed.
59. The law is clear that the employer has an obligation to explain the reason upon which termination of employment an employee is being contemplated. As can be deduced from the analysis above, the Claimant was served with a show cause letter citing generalized allegations to wit, violation of ICT resources and breach of policy instruments. The disciplinary hearing focused on the offence of alteration of students marks.
60. It is therefore my considered view that the failure by the Respondent to particularize the offence from the onset and the failure to stick to the timelines provided for the disciplinary process renders the entire disciplinary process unfair.
61. Based on the foregoing, I find and hold that the Claimant’s dismissal was not in accordance with fair procedure.

#### **Whether the reliefs sought are merited?**

62. In his Amended Memorandum of Claim, the Claimant prayed for various reliefs, which I address as hereunder in separate heads.
  - i. A declaration that his dismissal from employment was unlawful, un-procedural and unfair.

In view of the finding above that the dismissal of the Claimant was not based on valid reason and that fair procedure was not followed, I make declaration that the dismissal was unfair and therefore unlawful.
  - ii. Compensation for unlawful, un-procedural and unfair termination from employment as prayed for in the statement of claim.

As stated at paragraph 8 of this judgment, the Claimant sought for one month’s pay in lieu of notice, service pay and a maximum compensation for unfair termination.
    - a. One month’s pay in lieu of notice

Having found that the termination of the Claimant’s employment was unfair, he is entitled to pay in lieu of notice. I therefore award the Claimant Kshs 214,389 under this head
    - b. Service pay

From the Claimant’s salary slip for January 2022 annexed to the Claimant’s list of documents, it is clear that the Claimant was not a member of NSSF. The pay slip however shows that he was a member of the Respondent’s Staff Pension Scheme which he contributed to. He is therefore not entitled to this relief and the prayer is declined.



Compensation for unfair termination

Having found that the Claimant was unfairly and unlawfully terminated from employment, I award the Claimant 12 months' salary as compensation having taken into consideration the length of his service

- iii. A declaration that the Claimant is entitled to be unconditionally released or cleared by the Respondent.

In cross-examination, the Claimant admitted that the Respondent had already cleared him. This prayer has therefore been overtaken by events.

- iv. Damages for losses incurred due to failure to be released or cleared by the Respondent.

Section 49 of the *Employment Act* only provides for compensation for unfair termination which the Claimant has already been awarded. Besides, there is no legal or contractual basis for granting this relief.

- v. Costs of this suit and interest at court rates from time of filing this suit until payment in full.

As the Claimant having proved his case on a balance of probabilities is entitled to this prayer

- vi. A certificate of service as per section 51 of the *Employment Act*.

The prayer for certificate of service is granted because the claimant is entitled to the same under section 51 of the *Employment Act*.

- vii. An order for reinstatement

Section 12(3)(vii) of the *Employment and Labour Relations Court Act*, provides as follows in regards to reinstatement:

“In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders:

- (vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law.”

It therefore follows that this prayer cannot issue due to long passage of time.

- 63. Consequently, judgment is entered for the Claimant in the following terms:

- i. A declaration that the Claimant's termination from employment was unfair and therefore unlawful
- ii. The Claimant is awarded the following:-
  - a. One-month's salary in lieu ..... Kshs. 214,389
  - b. 12 months' salary as compensation for unfair termination ..... Kshs 2,572,668
- iii. The Respondent is directed to issue the Claimant with a certificate of service strictly in terms of section 51 of the *Employment Act*.



- iv. The Respondent shall meet the costs of this suit.
- v. Interest shall accrue from date of judgment unless payment of decretal sum is made within 30 days from date of judgment.

64. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON**

**THIS 29<sup>TH</sup> DAY OF MAY 2025**

**MAUREEN ONYANGO**

**JUDGE**

