



**Karume v Tana Water Works Development Agency (Cause E031 of 2024) [2025] KEELRC 1412 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1412 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E031 OF 2024  
ON MAKAU, J  
MAY 15, 2025**

**BETWEEN**

**GEOFFREY KABUI KARUME ..... CLAIMANT**

**AND**

**TANA WATER WORKS DEVELOPMENT AGENCY ..... RESPONDENT**

**JUDGMENT**

1. By a statement of claim dated 1st August 2024, the claimant alleged that his employment was unfairly terminated by the respondent on 7<sup>th</sup> November 2023. Therefore, he prayed for the following reliefs: -
  - a. 12 months compensation for unfair termination.....Kshs.1,188,480/-
  - b. One month's salary in lieu of notice.....Kshs.99,040/-
  - c. Salary for the months of October and November.....Kshs.198,080/-
  - d. Certificate of service
  - e. Costs of this suit with interest at court rates
  - f. Any or further relief as this court may deem fit.
2. The respondent denied the alleged unfair termination and averred that the termination was for a valid reason and fair procedure was followed. Therefore, it prayed for the suit to be dismissed with costs.
3. During the hearing, the claimant testified as CW1 and called no witnesses while the respondent called its HR and Administration Manager as its witness. Both witnesses adopted their written statements and produced bundles of documents as exhibits.



## Facts of the case

4. The claimant was employed by the Respondent as a Driver/Transport officer on 2<sup>nd</sup> July 2009. He applied for the job vide a letter dated 6<sup>th</sup> March 2009 which annexed Curriculum Vitae and testimonials. On the basis of the said documents, he was employed and worked until he wrote a letter dated 6<sup>th</sup> September 2016 seeking for salary scale upgrade. The letter attached copies of two Diploma certificates which he allegedly attained in addition to having done driving Grade I.
5. In response to the said request by the claimant, and on the basis of the said Diploma certificates, the respondent appointed the claimant as a security officer Grade 5, which was a promotion from Grade 6. His salary was also increased.
6. By a letter dated 11<sup>th</sup> October 2019, he was further promoted to the position of Security Assistant and his salary was again increased. All was well until the Public Service Commission (PSC) wrote the letters dated 19<sup>th</sup> October 2022 and 19<sup>th</sup> October 2023 requiring all Authorized Officers to undertake an audit of academic and professional certificates of all newly appointed officers in the preceding ten years in the Ministries, Departments, Agencies and State Corporations (MDAs) by 31<sup>st</sup> December 2023 and take disciplinary action against the culprits.
7. The respondent complied with the directive from the PSC by seeking authenticity of the claimant's certificates with the issuing institutions. The first to respond was Kenya Institute of Security and Criminal Justice vide a letter dated 21<sup>st</sup> February 2023 whereby it disowned the claimant's Diploma certificate in Security Management. The second was Kenyatta University which also disowned the claimant's Diploma certificate in Investigations vide a letter dated 24<sup>th</sup> February 2023. Finally, Kenya National Examination Council (KNEC) disowned the claimant's KCSE certificate from Riamukurwe Secondary School.
8. As a result of the new development, the respondent suspended the claimant by letter dated 17<sup>th</sup> October 2023 and required him to show cause why disciplinary action should not be taken against him for using fake certificates to secure employment and promotion.
9. He responded by his letter dated 23<sup>rd</sup> October 2023 whereby he neither denied nor admitted the charges but rather sought a period of one year to regularize his Secondary School Education certificate. He really pleaded for his job stating that he was a sole bread winner and also he was nearing his retirement. He then requested for a meeting to try amicable settlement of the matter as opposed to the intended disciplinary action.
10. The respondent invited the claimant to a disciplinary hearing on 6<sup>th</sup> November 2023 vide a letter dated 31<sup>st</sup> October 2023. The claimant never attended the hearing but on the day of the hearing, the respondent received a letter from the claimant giving one-month resignation notice and indicating his last working day as 31<sup>st</sup> (sic) November 2023.
11. The disciplinary hearing proceeded and a decision to dismiss him from service was made. His resignation was rejected and deemed as backdated considering his earlier response to the show cause letter. It was also viewed as an attempt to evade the disciplinary process.
12. In his testimony, he denied being aware of the disciplinary hearing and maintained that he was never served with any notice of the hearing. He further stated that he wrote his resignation letter on 16<sup>th</sup> October 2023 and posted it via EMS Speed Post on the same day.



13. He contended that as at the time of writing the resignation letter, he had not been invited to any hearing and he never received any until he was served with the termination letter dated 7<sup>th</sup> November 2023. He stated that the termination was done before the effective date of his resignation.
14. On cross examination, he contended that he applied for the job vide a letter dated 6<sup>th</sup> March 2009 and attached 1989 KCSE certificate from Ruiru High School. He disowned the KCSE certificate from Riamukurwe Secondary School. He also disowned the curriculum vitae filed by the respondent which bore his name and indicated that he went to Kahiga Primary school, Riamukurwe Secondary school, National Youth Service (NYS) and did carpentry course, that he also did AA Standard certificate and finally that he was computer literate.
15. However, he admitted he did carpentry at the NYS, he is computer literate, that he has AA Driving licence and he also did First Aid course which were indicated in the said curriculum vitae. He further admitted that he worked with Group 4 as a guard. He admitted that the cell phone number 0722 555 815 in the application letter and curriculum vitae belongs to him.
16. He admitted that he wrote the application letter dated 6<sup>th</sup> March 2009 and attached a curriculum vitae and testimonial, which were certified as true copies by a lawyer. He also admitted that he made the letter dated 6<sup>th</sup> September 2016 requesting for salary increment. He admitted further that the Diploma certificates from Institute of Criminal Justice and Kenyatta University filed by the respondent bore his name.
17. He confirmed that, after his request for salary increment he was appointed a Security Officer and thereafter he was appointed Security Assistant. He admitted that by letters filed by the respondent, the Institute of Security and criminal justice Kenyatta University, and KNEC disowned the Diploma certificates and KCSE certificates which bore his names.
18. He admitted that he was served with suspension letter dated 17<sup>th</sup> October 2023 and he responded vide letter dated 23<sup>rd</sup> October 2023. He admitted that he requested for one year to regularize his academic certificate and continue working.
19. He confirmed that he knew one Mathew Igerem, the HR officer but maintained that Mathew never called him via phone to collect the letter for the disciplinary hearing from the office. He further denied receipt of text message on 3<sup>rd</sup> November 2023 at 10:25 am to collect the said invitation to disciplinary hearing. He also denied that he responded to any such text message. He contended that the alleged text messages have been produced in court. He denied that he backdated his resignation letter to 16<sup>th</sup> October 2023.
20. He maintained that he was not given opportunity in a hearing to present the correct documents. Finally, he contended that his job was driving and had nothing to do with the said certificates which he disowned.
21. RW1, Pauline Wairimu Miriga, stated that the claimant submitted application dated 6<sup>th</sup> March 2009 attaching CV and testimonials including KCSE certificate from Riamukurwe Secondary School dated November/December 1989. The CV was in his name and it indicated that he went to Kahiga Primary School, Riamukurwe Secondary School and National Youth Service and did carpentry and joinery, had a Driving licence with AA Standard certificate, and that he was computer literate.
22. RW1 further stated that the claimant has admitted in his testimony that he had all what was in the CV and that the telephone number thereon, 0722 555 815 belonged to him.



23. She further stated that the claimant requested for salary upscale attaching two Diploma Certificates including Diploma in Security Management dated 20<sup>th</sup> November 2013 from Kenya Institute of Security and Criminal Justice and Diploma in Investigations from Kenyatta University dated 10<sup>th</sup> December 2010.
24. The request was accepted and the claimant was appointed as a security officer and later Security Assistant vide letters dated 12<sup>th</sup> October 2017 and 11<sup>th</sup> October 2019. Thereafter, the claimant's KCSE certificate and the two Diploma certificates were found to be fake after the issuing institutions disowned them and confirmed that they were not authentic.
25. As a result, the claimant was suspended and required to show cause why disciplinary action should not be taken against him for the offences of falsification of records; misleading the Agency; and gaining employment unfairly. The claimant responded vide letter dated 23<sup>rd</sup> October 2023 requesting to be allowed to continue working until retirement, plus he be given one year to regularize his academic certificates. She contended that the claimant admitted that his KCSE certificate was not authentic.
26. She further testified that the claimant was invited for disciplinary hearing on 6<sup>th</sup> November 2023 vide the letter dated 31<sup>st</sup> October 2023. He was called by Mathew Igerem to collect the said letter but he ignored. Mathew sent SMS text to him again on 3<sup>rd</sup> November 2023 at 10.25AM asking him to collect the invitation letter and he responded on 6<sup>th</sup> November 2023 at 13.51PM stating that he was unwell.
27. She denied the allegation by the claimant that he was denied a hearing before the termination. She maintained that the claimant was invited to a hearing and chose to resign by a letter received on 6<sup>th</sup> November 2023 via EMS Speed Post which was backdated to 16<sup>th</sup> October 2023.
28. The Disciplinary Committee considered the admission of the offence by the claimant in his response to the show cause letter and terminated his employment. The committee also rejected the resignation letter on account of the pending disciplinary proceedings.
29. On cross-examination, she admitted that the claimant's salary as at the time of separation was Kshs.99,040. She confirmed that the resignation letter indicated the last working day as 31<sup>st</sup> (sic) November 2023 but the disciplinary hearing was conducted on 6<sup>th</sup> November 2023 in the absence of the claimant.
30. She admitted that the letter inviting the claimant for the hearing was not served on him as it does not have his acknowledgment of receipt. She also confirmed that she did not file extracts of the SMS texts to prove that the claimant was notified of the disciplinary hearing. She also admitted that the claimant was not given any adjournment because he had already rendered a resignation.
31. She contended that all documents received in the office are acknowledged by a receiving stamp except applications for employment. She confirmed that the testimonials given by the claimant do not bear receiving stamp from the respondent's office. She further confirmed that the termination letter indicated that the resignation letter was declined. Finally, she confirmed that the claimant was never paid salary for October and November 2023 since the claimant rendered no services and his dismissal took effect from 1<sup>st</sup> October 2023.
32. After the hearing, both sides filed written submissions. I have carefully considered the pleadings, evidence and the rival submissions. It is a fact that the resignation notice by the claimant had not taken effect as at 6<sup>th</sup> November 2023 when the disciplinary hearing was held and as at 7<sup>th</sup> November 2023 when the respondent wrote the termination letter.
33. The issues for determination are: -



- a. Whether the termination of the claimant's employment by the respondent was unfair and unlawful.
- b. Whether reliefs sought are merited.

### **Unfair and unlawful termination**

34. According to section 45 (1 and 2) of the [Employment Act](#) provides that: -

“45. Unfair termination

- (1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
  - (a) that the reason for the termination is valid;
  - (b) that the reason for the termination is a fair reason—
    - i. related to the employee's conduct, capacity or compatibility; or
    - (ii) based on the operational requirements of the employer; and
  - (c) that the employment was terminated in accordance with fair procedure.”

35. The foregoing section identifies the requirements of unfair termination as lack of valid reasons to justify the termination, and failure to follow a fair procedure before the termination.

36. In this case, the reasons for termination were captured in the termination letter dated 7<sup>th</sup> November 2023 as follows: -

“The purpose of this letter therefore is to terminate your employment with Tana Water Works Development Agency with effect from 1<sup>st</sup> October 2023 on account of the following charges which amounts to Gross misconduct.

- i. Falsification of Records: You presented forged academic certificates in order to be considered for your employment and promotion which is in breach of section 30 of [Leadership and Integrity Act](#) 2012 which states that a state officer shall not falsify any records or misrepresent information to the public.
- ii. Misleading the Agency/Public: You misled the Agency during employment and as a result obtained employment through false pretense thereby denying other qualified Kenyans opportunity to be employed. This is in breach of section 19 of the Public Officers Ethics Act 2003 and section 29 of [Leadership and Integrity Act](#) 2012; which states that a public officer shall not knowingly give false or misleading information to any other person.

In addition, the acts of gross misconduct is a contravention of the moral and ethical requirements as stipulated in the [Public Officer Ethics Act](#), 2017 (sic) section 14.”



37. I have carefully considered the evidence tendered by both sides with respect to the offending KCSE certificate, and the two Diploma certificates. There is un rebutted evidence that the said academic certificates are fake and the alleged issuing institutions have all disowned them.
38. The respondent has contended that the claimant presented the said certificates to it to secure employment and promotion. The claimant denied that he presented the said documents and stated that he produced different documents including a KCSE certificate from Ruiru High School. The court is not satisfied with that explanation. If his allegations were true, he could have produced the originals or copies of what he presented.
39. However, he did not produce any certificate to support his allegation. Instead, he sought for one year to regularize his Secondary School Education certificate. Consequently, I agree with the respondent that such statement amounted to an admission of the offence of using a fake KCSE certificate to secure employment or promotion.
40. As regards the offence of presenting fake Diploma certificates to secure employment or promotion, the claimant said nothing in response to the show cause. The failure to deny the offence meant that he had no defence to offer. Consequently, I find that where in this case, an employee admits an offence as charged in a show cause letter or fails to specifically deny or offer a response, the employer is entitled to make an adverse conclusion against the employee and proceed to separate from the employee.
41. Having found that the claimant admitted, vide his response to the show cause letter, the offence of using fake KCSE certificate to secure employment from the respondent, and further failed to deny the offence of using fake Diploma certificates to secure promotion, I must hold that the respondent had a valid reason for dismissing the claimant from service.
42. In *Kenya Ports Authority v Fadhil Juma Kisuwa* (2017) eKLR, the Court of Appeal held that: -
- “The respondent’s response to the show cause letter was hollow and did not offer any explanation regarding the forged documents yet that was the crux of the matter. But he was afforded a hearing which he squandered by failing to squarely deal with the question of forgery of certificates. His explanation that he only presented the certificate from Kipsengere Secondary School did not answer the more serious question.”
43. As regards procedural fairness in the instant matter, there is evidence that the claimant was served with a show cause letter setting out the charges against him and invited him to respond within 21 days. He responded within a week and he was then invited to a disciplinary hearing. However, there is evidence that the claimant was ever served with the summons for the hearing.
44. However, guided by the above decision of the Court of Appeal, I hold that the claimant was accorded a fair opportunity to defend himself and he admitted one offence and further ignored the other charges. Thereafter, he served a resignation notice. In the circumstances, I see no basis for his allegation that he was dismissed through an unfair procedure.
45. Having found that the respondent has proved that the termination of the claimant’s employment was grounded on valid reasons and that fair procedure was followed, I hold that the termination was fair and lawful within the meaning of section 45 of the *Employment Act*.

## Reliefs

46. In view of the foregoing conclusion, I find that the claimant is not entitled to the prayer for compensation for unfair termination and salary in lieu of notice under section 49 of the Act.



47. The prayer for salary for the month of October and November 2023, and certificate of service are all declined because they are funded on ex turpi cause (an immoral cause) and it is now well settled principle of law that the court has no right to lend its aid to a transgressor who seeks to benefit from his own illegality.

48. Having said that, I find no merits in the suit and dismiss it with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF MAY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**ORDER**

This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

**ONESMUS N MAKAU**

**JUDGE**

