



**Methu v Judicial Service Commission (Cause E813 of 2021)
[2025] KEELRC 1420 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1420 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E813 OF 2021
CN BAARI, J
MAY 15, 2025**

BETWEEN

WILLIAM KIMANI METHU CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

1. In a Memorandum of Claim dated 28th September, 2021 and lodged in Court on 29th September, 2021, the Claimant seeks the following reliefs as against the Respondent: -
 - i. 12 months salary as compensation for unfair termination
 - ii. Unpaid salary for the period between 10th May, 2018 and 10th May, 2021.
 - iii. Interest and costs.
2. The Respondent filed a Statement of Response dated 16th November, 2021, denying the Claimant's claim, and further states that the Claimant provided false information to aide him secure a job, and was thus fairly terminated.
3. The Claimant's case was heard before Hon. Justice Rika on 11th October, 2023, when the Claimant testified in support of his case. The Respondent's case was heard on 20th November, 2024, before this court with one Mr. Robert Kibor testifying in support of the Respondent's case.
4. Submissions on the matter were filed for both parties.

The Claimant's Case.

5. The Claimant states that at all material times to this suit, he was employed by the Respondent as an Information Communication Technology Officer III. He states further, that he started his



employment with the Respondent on 11th May 2012 and worked until February, 2018 when he was suspended, and later unfairly terminated from employment.

6. The Claimant states that on 21st February 2018, he received a letter dated 13th February 2018 from the Respondent, on allegations that he had given false information for purposes of securing employment, and that the Respondent raised queries on the certificate he had presented, but which certificates had not been mentioned in his curriculum vitae.
7. The Claimant avers that he prepared a response, and submitted his credentials including a letter from Zetech University dated 28th February 2018 indicating that he had been a student of the said University and that he had successfully completed the coursework and passed the internal exams. He states that he also submitted a progress report with transcripts showing the scores in the examinations he had sat for.
8. It is the Claimant's case that to buttress his response on the question of accreditation of Nairobi Aviation College which the Respondent had raised, he obtained and supplied the Respondent with a certificate of accreditation from the Ministry of Higher Education Science and Education, and which certificate clearly showed that the said college was accredited to offer a Diploma in Information Technology. He avers further that he supplied the Respondent with a certified copy of the leaving certificate from the Nairobi Aviation College.
9. The Claimant states that he also received a Certificate of Completion from the Kenya National Examination Council (KNEC) syllabus for diploma in Information Technology and which he supplied to the Respondent.
10. He states that it was never disputed that the Nairobi Aviation College was on the list of accredited institutions by the Commission for Higher Education, and was listed in the Commission's Accreditation and Quality Assurance Report of July 2006 to June 2012.
11. The Claimant states that his response was similarly furnished to the Respondent, indicating and proving that at no particular point had he provided false information.
12. It is his case that as at the time of his employment, he had qualified for the position having been awarded a Diploma in IT in the year 2011 and the position in 2021. He avers further, that the scheme of service by the Respondent indicated that with a diploma, he was qualified for the job and there were no plausible reasons for his termination.
13. He avers that the procedure adopted by the Respondent was unlawful and abrupt. He avers that whilst he was granted a chance to set the record straight with the Respondent, and did so fastidiously and with great industry, he was denied a chance to continue his employ.
14. The Claimant states that he was a permanent employee by dint of letter of appointment and as at the time of termination, he was earning a basic salary of Kshs. 112,143/-
15. On cross-examination, the Claimant told court that he was asked to provide his documents both before and after confirmation, and that he only provided a progress report. He further confirmed that he did not complete the Diploma course at Zetech university, and that is why he provided a progress report.
16. The Claimant further confirmed that his curriculum vitae had erroneous information concerning completion of the diploma course at Zetech. He states further that though he said he had a certificate from Nairobi Aviation College, this information was also erroneous.
17. It is his evidence that he provided an accreditation for Nairobi Aviation College for the year 2012, and was not aware that it was actually accredited in 2016 as confirmed by the Kenya National Examination Council.



18. The Claimant states that he is entitled to the reliefs sought and prays that his claim be allowed with costs.

The Respondent's Case.

19. The Respondent states that the Claimant applied for and was offered employed by the Respondent as an ICT Officer III (PLS 8) on temporary basis, and posted to the Office of the Chief Registrar of the Judiciary vide Letter dated 11th May 2012.
20. It avers that the Claimant was confirmed for appointment and admitted to the permanent establishment vide a letter dated 15th November 2016, until his dismissal from the Respondent's employ, where he was serving at the Family Division of the High Court at Nairobi in the aforesaid capacity.
21. The Respondent states that at the time of employment, the Claimant presented his curriculum vitae, in which he indicated that he had attained a Diploma Course in Networking from Zetech College between September 2008 and April 2009, and in support thereof, he presented a Progress Report for Term II 2010 from Zetech College.
22. It states that vide a letter dated 21st November 2017, the Respondent requested the Claimant to produce a copy of the Diploma in Networking for its records, and in response, the Claimant produced a Progress Report from Zetech College and a Certificate of Completion in Information Technology from Nairobi Aviation College dated 17th November 2012.
23. It is the Respondent's case that due to the inconsistency in the documentation and information provided by the Claimant, it suspected forgery and on this account, it commenced an inquiry to verify the accreditation status of Nairobi Aviation College and upon confirming the accreditation status, the Respondent noted the following irregularities:-
- i. Nairobi Aviation College was approved to train (Kenya National Examination Council) KNEC Courses on 24th June 2016 yet the Diploma Certificate provided by the Claimant was issued on 17th November 2012; and
 - ii. The Certificate tendered by the Claimant denotes that he had completed the KNEC Syllabus for Diploma in Information Technology, yet Nairobi Aviation College was not accredited to offer KNEC examination in 2012.
24. That in view of the foregoing, and noting that the Claimant's actions amounted to gross misconduct, the Respondent issued the Claimant with a Show Cause letter dated 13th February 2018 for the allegations of giving false information for purposes of securing employment as an ICT Officer III in the Judiciary by presenting a curriculum vitae indicating that he attained a Diploma Course in Networking from Zetech College between September 2008 and April 2009, proof of which he failed to avail to the Respondent; and suspected forgery for providing a Diploma Certificate in Information Technology from Nairobi Aviation College instead of the Diploma Certificate in Networking from Zetech College as per his curriculum vitae.
25. The Respondent states that the Claimant was afforded 21 days to respond substantively to the Show Cause letter, which he responded to through an undated letter received by the Respondent on 7th March 2018.
26. The Respondent avers that the disciplinary hearing took place on 18th July, 2018 wherein, the Claimant stated that he was aware of the allegations levelled against him and fully participated in the proceedings.



27. It states that the HRMAC deliberated thereafter and established inter alia that the Claimant agreed that he lacked a Diploma Certificate at the time of appointment and consequently he was not qualified for the job in the first instance. The Respondent further avers that the Committee deliberated on the Claimant's case, evaluated the evidence presented by the Claimant and the evidence against the Claimant and observed that the Claimant had not met the minimum requirements for the post of ICT Officer III at the time of appointment, and thus he did not hold the qualifications for the position.
28. It is the Respondent's case that the Committee was satisfied that the allegation of giving false information for the purpose of securing employment in the Judiciary were proved against the Claimant, and recommended that there was need to appoint the Claimant to a position he is qualified for, that is, the post of clerical officer.
29. The Respondent states that on 26th June 2020, the DHRM reviewed the recommendation of the HRMAC to appoint the Claimant to an appropriate position that he is qualified for, but Management concluded that since this was an issue of gross misconduct, the Claimant should be dismissed from service with effect from the date of suspension being 10th May 2019.
30. The Respondent avers that the decision to dismiss the Claimant was communicated to him vide a letter dated 10th July 2020, and he was informed of his right of appeal and that he did indeed file an appeal against the decision to dismiss him vide a letter & Affidavit sworn on 20th September 2019.
31. The Respondent states that it disallowed the appeal during its meeting of 30th September 2020, and communicated the decision to the Claimant vide a letter dated 1st October 2020 on the grounds that there were no sufficient grounds advanced. The Claimant was also informed of his right to review the Respondent's decision, but he did not.
32. On cross-examination, RW1 told court that only the CV was considered during the Claimant's employment. He confirmed that the Claimant was not asked to provide his certificates at employment.
33. The Respondent urges court to dismiss the Claimant's claim with costs.

The Claimant's Submissions.

34. It is the Claimant's submission that the Respondent's decision to terminate his employment fails the test of substantive fairness under Section 43(1) of the *Employment Act*, 2007, which mandates that an employer must prove a valid reason for termination. He submits that the Respondent has not met this burden as the allegation of falsified qualifications is demonstrably false.
35. He submits that the Respondent's concession that academic certificates were not a hiring requirement in 2012, undermines its case on the premise that imposing such a condition retrospectively, six years into the Claimant's tenure, is legally untenable. He had reliance in the case of *Njuguna v Times U Sacco Limited (Cause E011 of 2023)* [2024] KEELRC 1249 (KLR) (15 May 2024), where the court held that employers cannot enforce new employment conditions without prior notice or contractual amendment.
36. It is the Claimant's submission that the termination process violated Section 41 of the *Employment Act*, 2007, which requires an employer to provide an employee with a fair opportunity to be heard before dismissal.
37. He submits further that the HRMAC proceedings fell woefully short of this standard on the basis that a four-month delay due to lack of quorum breached the requirement for a timely hearing coupled with the fact that the Claimant was prohibited from calling witnesses or fully presenting his defense,



denying him due process. He sought to rely in the case of *The German School Society & another v Ohany & another* (Civil Appeal 325 & 342 of 2018 (Consolidated)) [2023] KECA 894 (KLR) (24 July 2023), where the Court of Appeal held that failure to conduct a proper hearing renders a termination procedurally unfair.

38. The Claimant submits that his six-year record of exemplary service-evidenced by promotions and commendations-further highlights the Respondent's lack of justification. That the sudden scrutiny of his qualifications, absent any prior concerns, suggests bad faith and procedural overreach.
39. The Claimant finally submits that the Respondent's decision to terminate his services was both substantively and procedurally unfair, having demonstrated the validity of his qualifications, and the Respondent's failure to discharge its burden of proving justifiable grounds for dismissal.
40. He prays that the court to grants him the prayers sought.

The Respondent's Submissions.

41. It is submitted for the Respondent that it had a valid reason to dismiss the Claimant and that the Claimant's termination was fair and procedural, hence he is underserving of the reliefs sought.
42. It submits that the Claimant was rightfully and justifiably suspected of having forged his academic qualification to secure employment, which would amount to gross misconduct and would justify the summary dismissal of an employee per Section 44(4)(g) of the *Employment Act*.
43. The Respondent further submits that it was able to show that it genuinely believed that there were reasonable and sufficient grounds to suspect the Claimant of gross misconduct. It sought to rely in the case of *Kenya Revenue Authority v Reuwel Waitihaka Gitahi & 2 others* [2019] eKLR, to support this position.
44. It is its submission that the Claimant's action of providing false Certificates and information in order to secure employment, amounts to gross misconduct and is a valid reason to summarily dismiss the Claimant from employment, and pray that the Court finds the termination substantively fair.
45. On procedural justice, the Respondent submits that the Claimant was informed of the allegations levelled against him and given an opportunity to be heard on the allegations in accordance with the relevant laws, regulations, jurisprudence and policies and in the premise, the Respondent submits that the procedure it applied in dismissing the Claimant was fair.
46. The Respondent submits that the Claimant has failed to establish an unfair termination and is therefore, not entitled to the reliefs sought.
47. The Respondent stakes its entitlement of costs on account of the claim being unmerited.

Analysis and Determination.

48. I have carefully appraised the pleadings, the evidence adduced, witnesses' testimonies and the parties' written submissions. The following issues arise for determination: -
 - a. Whether the Claimant's was unfairly dismissed
 - b. Whether the Claimant is entitled to the reliefs sought.



Whether the Claimant was unfairly dismissed.

49. A termination/dismissal is unfair where the employer fails to adhere to Sections 41, 43, 45 and 47 of the *Employment Act*, 2007 on procedure and the substantive fairness tests.

50. Section 41 of the *Employment Act* states thus on procedural fairness: -

“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.”

51. The Claimant was issued with a notice to show cause letter dated 13th February, 2018. He admitted having responded to the show cause and his detailed response was produced in evidence. It is also not disputed that the Claimant was invited for a disciplinary hearing and which he attended on 18th July, 2018.

52. The Claimant has also confirmed that he was notified of his right of appeal against the decision to dismiss him, and that he did appeal and which appeal was declined. The Court of Appeal in *Postal Corporation of Kenya v Andrew K.Tanui* [2019] KECA 489 (KLR) spelt out what has come to be known as the minimum standards of a fair procedure as follows:-

“Four elements must thus be discernible for the procedure to pass muster: -

- i. an explanation of the grounds of termination in a language understood by the employee;
- ii. the reason for which the employer is considering termination;
- iii. entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- iv. hearing and considering any representations made by the employee and the person chosen by the employee.”

53. The minutes of the disciplinary hearing of 18th July, 2018 do not show whether or not the Claimant was represented at the hearing. The minutes indicate that the Claimant was invited through a telephone call and in writing, but no mention of whether he was informed to appear with a representative.

54. In the case of *Kisang v Judicial Service Commission (Cause E521 of 2020)* (20221 KEELRC 4857 (KLR) (29 September 2022) {Judgment) the Court held thus:-

“Section 41 of the *Employment Act*, 2007 provides the structure for procedural fairness. In the Kenyan situation, however as this court has stated in the past, this provision cannot be read in isolation from the relevant constitutional provisions and more specifically those that relate to fair hearing, the right to fair administrative actions, the provisions of the Fair Administrative Actions Act, and the tenets of natural justice, where an employer has a disciplinary policy and procedure the same shall be looked at using the statutory and constitutional lens obtaining under the statutes and *the Constitution*.

Fair procedure would entail three components, notification/hearing - the employer contemplating to sanction an employee has to inform the employee of the intention and



the grounds stirring that intention, hearing component- the employee shall have to be given an opportunity to make representations on the grounds, intertwined in this component is the employee's right to accompaniment, lastly consideration component the employer shall take into consideration the representations by the employee before making a decision.

The components are clearly inherent in the stipulations of part iv of the *Judicial Service Act*. 11.”

55. I will therefore in the circumstance fault the procedure on the sole ground that the Claimant was neither informed to attend the hearing with a representative, nor did he actually appear with one, and find the Claimant's dismissal procedurally unfair.
56. On the issue of substantive justification for the dismissal, the court heard that the Respondent asked the Claimant to submit his Diploma certificate in networking, being the only document he indicated in his CV at employment, but which was missing from his personal file. The Respondent's position is that it noted inconsistencies in the documentation and information provided by the Claimant, and suspected forgery and on this account, it commenced an inquiry to verify the accreditation status of Nairobi Aviation College.
57. It avers that upon confirming the accreditation status, it noted that Nairobi Aviation College was approved to train (Kenya National Examination Council) KNEC Courses on 24th June 2016, yet the Diploma Certificate submitted by the Claimant was issued on 17th November 2012, and that the Certificate tendered by the Claimant denotes that he had completed the KNEC Syllabus for Diploma in Information Technology, yet Nairobi Aviation College was not accredited to offer KNEC examination in 2012.
58. The Respondent further avers that instead of submitting a diploma certificate in networking, the Claimant produced a Progress Report from Zetech College and a Certificate of Completion in Information Technology from Nairobi Aviation College dated 17th November 2012, while he had indicated in his CV at employment that he had attained a Diploma in Networking from Zetech College (now Zetech University) between September 2008 and April 2009.
59. On cross-examination, the Claimant told court that he was asked to provide his documents both before and after confirmation, and that he only provided a progress report. He further confirmed that he did not complete the Diploma course at Zetech university, and that is why he only provided a progress report.
60. The Claimant further confirmed that his curriculum vitae provided erroneous information concerning completion of the diploma course at Zetech. He states further that though he said he had a certificate from Nairobi Aviation College, this information was also erroneous.
61. It is his evidence that he provided an accreditation for Nairobi Aviation College for the year 2012, and was not aware that it was actually accredited in 2016 as confirmed by the Kenya National Examination Council.
62. Section 43 of the *Employment Act* states:-
 - “(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.”

63. In *Galgalo Jarso Jillo v Agricultural Finance Corporation* {2021} eKLR the court opined thus on substantive fairness: -

“In terms of section 43 of the *Employment Act*, an employer will be deemed to have a substantive justification for terminating a contract of service if he/she genuinely believed that the matters that informed the decision to terminate existed at the time the decision was taken. In other words, it is not a requirement of the law that the substantive ground informing the decision to terminate must in fact be in existence. All that is required is for the employer to have a reasonable basis for genuinely believing that the ground exists even if it later turns out that it, in fact, did not. In my view, what the law is concerned with here is whether the circumstances surrounding the decision to terminate would justify a reasonable man on the street, standing in the same position as the employer, to reach a similar decision as him/her regarding the termination.”

64. The Court of Appeal further held in *CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona* (2015) eKLR that:-

“In considering whether termination was fair or unfair, the court ought to examine whether the reason(s) for termination was valid and whether the procedure for dismissal was fair. Therefore, in such a case as the one before us the court considers both the procedural and substantive justice.”

65. In the instant case, the issue was not that the Claimant did not have the requisite papers to qualify him for the job he held as the Respondent had considered redeploying him to the position of clerical officer, but the issue was that he submitted forged documents which upon verification with the accreditation bodies, the Respondent confirmed that Nairobi Aviation College was approved to train (Kenya National Examination Council) KNEC Courses on 24th June 2016, yet the Diploma Certificate submitted by the Claimant was issued on 17th November 2012, long before the accreditation.

66. The Claimant also confirmed on cross-examination that he did not complete the Diploma course on networking at Zetech university even when he had indicated in his CV that he held the Diploma at employment.

67. The reasons for the Claimant’s dismissal are in my view fair, valid and justified as the Claimant did not rebut the evidence led in support of the dismissal. I thus find the Claimant’s dismissal substantively fair.

68. In whole, I find the Claimant’s dismissal unfair only on account of procedure.

Whether the Claimant is entitled to the remedies sought.

69. The Claimant sought 12 months salary as compensation for unfair termination, unpaid salary for the period between 10th May, 2018 and 10th May, 2021, Interest and costs.

70. On the prayer for compensation, the dismissal has been found unfair only on account of procedure on the basis that the Claimant was not informed of his right to have a representative present during the hearing.



71. The Claimant having made a detailed written response to the show cause and appeared physically for the hearing to urge his case, I deem an award of one month's salary sufficient compensation for the unfair dismissal.
72. On the claim for unpaid salary for the period between 10th May, 2018 and 10th May, 2021, the Claimant did not lead any evidence to prove his entitlement to the pay having been found guilty of the charges and the suspension period having been indicated to be without pay.
73. This claim thus fails and is dismissed.
74. I conclude thus:
- i. That the Respondent pays the Claimant one month salary for the unfair dismissal at Kshs. 112,143/-
 - ii. The claim having partly succeeded, each party shall bear their own costs of the suit.

Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
15TH DAY OF MAY, 2025.**

C. N. BAARI

JUDGE

