



Omundi v Judicial Service Commission & another (Cause E046 of 2023) [2025] KEELRC 1886 (KLR) (27 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1886 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E046 OF 2023
AN MWAURE, J
JUNE 27, 2025**

BETWEEN

JOHN OSORO OMUNDI CLAIMANT

AND

JUDICIAL SERVICE COMMISSION 1ST RESPONDENT

CHIEF REGISTRAR OF JUDICIARY OF KENYA 2ND RESPONDENT

JUDGMENT

1. The Claimant filed a Memorandum of Claim dated 22nd September 2023, praying for judgment against the Respondent for:
 - i. A declaration that the Claimant's dismissal was unlawful, unjust, and discriminative, and the same amounts to unfair dismissal.
 - ii. Unpaid salary in lieu of notice amounting to Kshs. 101,572/=.
 - iii. Claimant's service gratuity of Kshs.558,646/=
 - iv. Unpaid half salary he did not receive from October 2019 to December 2020 of Kshs.711,004/=
 - v. Compensation for unfair/wrongful termination equivalent to twelve (12) months' pay amounting to Kshs.1,218, 864/=
 - vi. An order compelling the Respondent to settle the outstanding benefits as enumeration above.
 - vii. In the alternative to the above, the Claimant prays that:
 - i. He be reinstated unconditionally with full benefits
 - viii. Costs of the suit and interest in (c) and (e) above at court rates



- ix. Any other relief that this court may deem fit to grant.

Claimant's case

2. The Claimant avers that he was employed by the 1st Respondent as a clerical officer on 10/12/2008 via a letter dated 20/01/2009, and was confirmed on permanent and pensionable terms on 15/03/2012.
3. Over a span of more than 10 years, the Claimant avers that he has served diligently without disciplinary issues and was promoted to Accounts Assistant II on 04/11/2015, earning a total monthly salary of Kshs.101,572/=.
4. The Claimant avers that his duties included: generating Deposit Vouchers from JFMIS alternate to Chomba, preparing monthly reports for RADF alternate, examining all payment vouchers, maintenance of deposit cash book. collection of traffic matters revenue, preparation of daily revenue returns, surrender of daily collection to Obayi, daily confirmation of all revenue in the bank statement, prepare A.I.E monthly bank reconciliation, checking of revenue and A.I.E cash books, assist in reconciliation of revenue account, issuing of cheques to merchants and depositors, attend to all customers' queries, monthly reconciliation of deposit bank balance and the general ledger balance.
5. The Claimant avers that he has worked for the Respondents at Eldoret, Naivasha, and Molo Law Courts with full dedication in various capacities he held.
6. Vide a letter dated 23/09/2019, the Claimant avers that he was accused of financial misconduct totalling Kshs. 1,534,121/= and was asked to submit documentation, which he did on 26/09/2019, giving a detailed explanation denying his wrongdoing until his innocence is proven.
7. The Claimant avers that he was interdicted on 02/10/2019 and received half salary, and a disciplinary process ensued, culminating in termination on 04/01/2021, which he asserts was unlawful, citing lack of evidence, procedural irregularities, and breach of natural justice and employment rights.
8. The claimant now seeks compensation amount to Kshs. 2,590,086/= comprising payment in lieu of notice, service gratuity, unpaid half salary, and unfair termination of 12 months' compensation.

Respondents' statement of response

9. In opposition to the Memorandum of Claim, the Respondents filed a Statement of Response dated 20th March 2024.
10. The Respondents acknowledge the Claimant was appointed on probationary terms as a Clerical Officer effective 10th December 2008 and later promoted to Accounts Assistant I (PLS 9) on 4th November 2015.
11. The Respondents aver that they concede aspects of the Claimant's employment and duties, including revenue collection for traffic matters.
12. The Respondents deny his consistent diligence and allege his involvement in fraudulent revenue collection at Molo Law Courts.
13. The Respondents aver that, according to the audit findings dated 6th September and 24th October 2019, the Claimant and colleagues operated parallel receipt books, leading to a loss of Kshs. 1,534,121.00/=.
14. Despite being given a chance to explain, the Respondents aver that he allegedly failed to provide sufficient justification, citing gross misconduct under section D(7.2) of the Judiciary Human Resource Policies and Procedures Manual (2014) and sections 44(3) and 44(4) of the *Employment Act*,



15. The Respondents aver that they issued a show cause letter on 12th November 2019, conducted a disciplinary hearing on 17th November 2020, and summarily dismissed the Claimant via a letter dated 4th January 2021.
16. The Respondents deny paragraphs 15, 16, and 18 through 22 of the Memorandum of Claim and assert that the Claimant must strictly prove the allegations.
17. The Respondents maintain that the Claimant's duties, such as preparing daily revenue returns, confirming revenue in bank statements, and reconciling revenue accounts, place him at the centre of the fraudulent collection of Kshs.1,534,121/=.
18. The Respondents further argue that the dismissal was procedurally and substantively fair under section 43(1) of the *Employment Act* and the *Judicial Service Act*.
19. The Respondents aver that there was gross misconduct, a breach of trust, and findings from the audit report revealing a wider misappropriation of Kshs.33,000,000 at Molo Law Courts.
20. The Respondents aver that reinstatement is unfeasible and the claim lacks merit, which should be dismissed with costs.

Claimant's reply to the Respondents' statement of response

21. The Claimant filed a reply to the Respondents' statement of response dated 17th May 2024.
22. The Claimant refutes all factual allegations in the Respondents' statement of response, specifically denying paragraphs 8, 10, 11, 12, 14–17, 20–22, 24, and 25 Memorandum of Claim and challenges the justification for what is termed as an unlawful termination.
23. The Claimant avers that the response is inconsistent, misleading, and comprised of baseless denials, and therefore seeks that it be struck out in whole or in part, with judgment entered in the Claimant's favour as per the initial statement of claim.

Claimant's evidence in court

24. The Claimant, CW1, adopted his witness statement dated 22nd September 2023 together with the list of documents dated even date as his evidence in chief.
25. CW1 stated that he was not a bank signatory of Molo Law Courts, and he did not confess to any allegations levelled against him. CW 1 also stated that he was not the accountant in charge, and he was advised by the accountant to sign the receipts.
26. In cross-examination, CW1 testified that he received an internal memo referencing a complaint about 114 parallel receipts, and the head of station requested a written explanation. He stated that he was not provided with the audit report prior to the audit query and had informed the head of station accordingly.
27. He further stated that he was served with an interdiction letter dated 2nd October 2019, pending the conclusion of the audit. The internal memo he received was dated 6th September 2019. He clarified that the questioned parallel receipts numbered 5 and 7, linked to approximately 90 traffic cases dating back to 2018, during which he was in charge of the traffic department.
28. CW1 explained that three individuals, including himself, were responsible for issuing receipts, naming the others as Tamar and Geoffrey Obayi. However, he noted that only he was authorized to collect traffic revenue at the counter, and he did not handle any case files.



29. Regarding the audit findings, CW1 stated that out of 17 sampled receipts, three were attributed to him. However, he disputed their authenticity, claiming he had not seen those receipts. He also stated that the auditors primarily interacted with Mr. Tamar during their investigation.
30. CW1 testified that he was issued with a Notice to Show Cause letter, to which he duly responded. Following this, he was placed on an alimentary allowance equivalent to one-third($1/3^{\text{rd}}$) of his salary. He stated that he was invited to a disciplinary hearing in November 2020 and was informed of his right to be accompanied by a colleague. However, he did not log in to the virtual hearing scheduled for 25th November 2020 and was unaware if it proceeded in his absence.
31. He further stated that he missed a subsequent hearing due to a management meeting. Nonetheless, he attended the disciplinary hearing held on 17th November 2020 without a colleague and confirmed that the Respondent's witness was present. CW1 indicated that the committee recommended his reinstatement. Despite this, he received a dismissal letter dated 4th January 2021, which he described as unfair. He also stated that his appeal against the dismissal was ultimately unsuccessful, having been dismissed on 26th June 2021.

Respondents' evidence in court

32. RW1, Peter Mwai, the Respondents' auditor, adopted his witness statement dated 20th March 2024, together with the list of documents dated 24th October, 2019, as his evidence in chief.
33. RW1 testified that he participated in the audit conducted at Molo Law Courts in August 2019, which aimed to assess the adequacy of revenue controls. He stated that the audit uncovered several irregularities, including a loss of Kshs. 1,534,121/= in revenue and deposits. According to RW1, the Claimant was implicated in the process and allegedly admitted to issuing parallel receipts alongside Geoffrey Ochieng Obayi. He confirmed his involvement in the disciplinary proceedings and noted that the Claimant was afforded an opportunity to defend himself.
34. In cross-examination, RW1 stated that the Claimant was neither subordinate staff nor the head of the accounts office. He stated that the audit team received various financial records, including the Counterfoil Receipt Book, cash book, bank statements, and reconciliation reports, but did not file these; instead, they produced a report.
35. Although not a handwriting expert, RW1 stated that the Claimant's specimen signature resembled those on the questioned receipts, and no interns were present at the time. He clarified that the Claimant, who was not a signatory to transactions, was linked to only three receipts and was asked to refund Kshs.30,000/=, with no evidence directly tying him to the broader loss of Kshs.1,534,121/= . RW1 added that the committee report indicated Mr. Tamar accepted responsibility and cleared the Claimant of wrongdoing. The matter was reported to the DCI, though RW1 was unaware of its findings.
36. In re-examination, RW1 stated that the total amount defrauded was Kshs.1,534,121/=, and stated that the Claimant allegedly confessed to issuing parallel receipts in his response to the Notice to Show Cause letter. He confirmed that the defrauded funds were not received by the Respondents and that disciplinary action was recommended against those involved. Specifically, the committee recommended that the Claimant refund Kshs. 30,000/=.
37. RW2, Isaac Kamau, the Respondents' Assistant Human Resource Director, adopted his witness statement dated 20th March 2024 as his evidence-in-chief. He stated that the Claimant was issued with a Notice to Show Cause, which he responded to accordingly, and was subsequently invited



to a disciplinary hearing where he testified. RW2 stated that the Claimant was informed of the Respondents' decision and was accorded a fair hearing, during which he did not request the furnishing of documents.

38. In cross-examination, RW2 stated that he did not attend the disciplinary hearing but noted that had the Claimant requested any documents in writing, they would have been provided. He stated that the hearing minutes were recorded by the Human Resource Director, Dr. Kalei, and that the parallel receipts allegedly implicating the Claimant were not shared with him. RW2 confirmed he did not participate in the audit and was unaware of any subsequent hearing. He acknowledged the charge against the Claimant was gross misconduct involving the use of parallel receipts. While the Human Resource Committee conducted the disciplinary hearing and recommended that the Claimant was not responsible for operating parallel receipts, RW2 emphasized that the Human Resource Committee's role was advisory, with the final decision resting independently with the Respondents.
39. Parties were directed to file their respective written submissions.

Claimant's written submissions

40. The Claimant submitted that his dismissal by the Respondents was procedurally and substantively unfair, contrary to sections 41, 43, 45, and 47 of the *Employment Act*. The Claimant contended that he was neither accorded a fair hearing nor given sufficient opportunity to be heard or make representations, nor was he furnished with supporting documents or evidence. The Claimant relied on the cases of *Alphonce Maghanga Mwachanya V Operation 680 Limited* [2013] eKLR and *Walter Ogal Anuro V Teachers Service Commission* [2013] KEELRC 386 (KLR), the court held that for termination of employment to take place, there must be both procedural fairness and substantive justification. Additionally, in *Kenya Union of Commercial, Food and Allied Workers V Kakamega Teachers SACCO Industrial Cause No. 4B of 2013*; [2013] LLR 221 (ICK), the court held that unionized employees must be heard in the presence of union representatives, failing which the dismissal is rendered unfair.
41. The Claimant further submitted that the allegations leading to his termination, particularly relating to the alleged use of parallel receipts, were unsubstantiated, malicious, and not supported by conclusive evidence. As such, the Respondent failed to discharge the burden of proof under section 43 of the *Employment Act*.
42. Consequently, the Claimant seeks reliefs including a declaration of unlawful dismissal, unpaid salary, notice pay, gratuity, unpaid half salary from October 2019 to December 2020, and compensation. The Claimant relied on the case of *Raphael Wellington Okonim V Sunthesis Limited* [2012] eKLR, where the court emphasized factors such as the consequences and circumstances of dismissal in determining compensation for unfair termination.
43. The Claimant urged this Honourable Court to find that the termination was unlawful and he is entitled to the reliefs sought.

Respondents' written submissions

44. The Respondents submitted that the Claimant's dismissal complied with the standards of procedural fairness as mandated under Article 47 of *the Constitution*, section 41 of the *Employment Act*, and section 32 and Rule 25 of the Third Schedule of the *Judicial Service Act*. The Respondents contended that a disciplinary committee was constituted in accordance with section 32 of the Judiciary Service Act to investigate audit findings of misappropriation at Molo Law Courts.



45. The Respondents submitted that the Claimant was interdicted on 2nd October 2019, invited to a disciplinary hearing on 17th November 2020, and was informed of his right to representation but chose to appear alone. Although the committee recommended conditional absolution upon a Kshs. 30,000/= refund, the Commission was not bound by that recommendation and proceeded to dismiss the Claimant by letter dated 4th January 2021. His subsequent appeal was also dismissed.
46. The Respondents relied on case law to reinforce the procedural requirements, including *Oboye V Judicial Service Commission* [2022] KEELRC 321 (KLR), where the court held procedural requirements are the need for timely notice, access to relevant documents, opportunity to respond, and the right to representation. The Respondent also relied on the case *Benedict Obonyo V Judicial Service Commission* [2021] KEHC 7520 (KLR) and the Court of Appeal decision in *Judicial Service Commission V Gladys Boss Shollei* [2014] KECA 334 (KLR), which the courts held that the procedural structure under the *Judicial Service Act* and affirmed the Commission's authority to act independently on disciplinary, and recommendations. Additionally, in *Mwende V Interstrat t/a Big Square* [2023] KEELRC 1153 (KLR), the court held that the statutory obligation is to offer notice, a hearing, and consider representations before dismissal. Accordingly, the Respondents maintain that all legal and procedural safeguards were duly observed.
47. The Respondents relied on Section 43 of the *Employment Act* which provides for reasons of an employer to terminate an employee at the time of dismissal while Sections 44(3), 44(4)(g), and 47(5) of the *Employment Act*, which allow for summary dismissal where an employee is reasonably suspected of gross misconduct or a criminal offense causing significant harm to the employer's property.
48. The Respondents argued that the dismissal stemmed from findings in an internal audit report that revealed fraudulent collection of court revenue through parallel receipt books, implicating the Claimant. Despite denying intent to defraud, the Claimant admitted involvement in revenue collection during the period in question and offered to refund the missing funds, reinforcing suspicion of culpability. In *Judicial Service Commission V Gladys Boss Shollei* (supra), the court held that the legality of the dismissal is established by emphasizing the reasonableness test if a reasonable employer might have dismissed the employee, the action is deemed fair. Similarly, in *Lumanyasi V West Kenya Sugar Co. Ltd* [2023] KEELRC 2206, the court affirmed that dismissals must be based on valid reasons related to conduct and follow due process, both of which the Respondent claimed were satisfied.
49. For the reliefs sought, the Respondents submitted that the Claimant is not entitled to them in terms of a declaration that the dismissal was unlawful, payment in lieu of notice, service gratuity and compensation for unfair termination.
50. In conclusion, the Respondents urged this Honourable Court to find that the dismissal followed both substantive and procedural fairness and therefore the suit should be dismissed with costs.

Analysis and determination

51. The court has considered the pleadings from both parties, the rival submissions by both counsels; the issues for determination are as follows:
 - i. Whether the Claimant's termination was unlawfully done
 - ii. If (i) is in the affirmative, whether the Claimant is entitled to the reliefs sought
 - iii. Who should bear the costs of the suit.



52. In *Walter Ogal Anuro V Teachers Service Commission*(supra), the court held that:
- “For termination to pass the fairness test, it ought to be shown that there was not only substantive justification for termination but also procedural fairness. Substantive justification refers to the reasons for termination, and procedural fairness is the process applied to conduct the disciplinary proceedings.”
53. In *The German School Society & Another V Ohany & another* [2023] KECA 894 (KLR), the Court of Appeal held that for a termination to be considered lawful, it must satisfy both the substantive and procedural fairness. This means an employer must not only establish justifiable grounds for ending the employment, but also follow the correct procedures, such as issuing a notice and giving the employee a fair chance to respond.
54. In this instant case, an internal audit conducted at Molo Law Court revealed that the Claimant was implicated in the fraudulent collection of Kshs.1,534,121. The Internal Draft Audit report dated 6th September 2019 established that several receipt books used could not be traced to the CRB records, nor the Regional Assistant Director of Finance for the Central Rift Region. The reported financial loss arose from unauthorized receipting of court fees, fines, and deposits through the use of unapproved, parallel receipt books.
55. The Respondents went ahead to interdict the Claimant on 2nd October 2019 on the grounds of gross misconduct, and he was placed on half salary. Section D (7.2) of the Judiciary Human Resource Policies and Procedures Manual (2014) provides that in handling disciplinary matters, the Judiciary considers the gravity of the offence, its impact on the administration of justice, the employee’s past disciplinary record, and overall service history. Once a complaint is made, the Chief Registrar of the Judiciary (CRJ) issues a notice to show cause, granting the accused at least 14 days to respond. The officer must then appear before the Commission, with legal representation if desired. A comprehensive report is prepared by the immediate supervisor, detailing the officer’s identity, allegations, actions taken, the officer’s defence, the supervisor’s comments on the matter, and a recommendation on the appropriate disciplinary action.
56. The Claimant responded to the charges preferred against him and he attended the disciplinary hearing on 17th November 2020, where the Human Resource Management Committee deliberated the matter on 25th November 2020 and established that Mr. Tamar confirmed that he signed all the receipts books at the station and this in a way absolved Mr. Omundi and Mr. Obayo in relation to the parallel receipt in question. The said Committee in its findings recommended that the Claimant’s suspension be lifted with full pay and be surcharged Kshs.30,000/=.
57. Article 72 of the Kenya Constitution and the *Judicial Service Act* mandates the JSC to appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates other judicial officers and other staff of the judiciary in the manner prescribed by an Act of Parliament Subsection 3 states: -
- “If it is decided that the disciplinary proceedings should continue, the Commission shall appoint a Committee or Panel to investigate the matter consisting of at least three persons who shall be persons to whom the Commission may, by virtue of *the Constitution*, delegate its powers: Provided that the Chief Justice shall not be a member of Committee or Panel, but if puisne judge of the High Court have been designated as members of the Commission under *the Constitution*, they may be members of the Committee or Panel.”



58. The court in *Fred Oboge -Vs The Judicial Service Commission* also summarised the basic requirements of procedural fairness emphasising that the procedure for the removal of staff of the judiciary is governed by the provisions of Judicial Service Commission Act and more specifically Section 32 of the Act as well as Rule 25 of the Third Schedule of the Act.
59. The Respondent did mandate the Human Resource Management Advisory Management Committee who met the Claimant on 25th November 2023 for a disciplinary hearing. The panel comprised high representative of the Management including Deputy Chief Registrar, Registrar of the High Court among others. After robust deliberations they recommended that the Claimant be absolved from wrong doing and be given the benefit of doubt. They noted that Mr. Tamar confirmed he signed all the specific books which implicated loss of revenue of the judiciary and so absolved the Claimant from the loss. The signatures on the receipts in question are not confirmed by any expert that the Claimant signed the impugned receipt books. Infact the aforesaid committee only recommended the claimant to pay back Kshs.30,000/= being the money that could be attributed to him. But it is not even clear why the same was attributed to him.
60. The committee recommended the Claimant be absolved from wrong doing and be reinstated to his former employment.
61. The gist of this recommendation by this high delegate committee was that the Claimant was not liable for the loss of Kshs.1,534,121/-.
62. In that case the Respondent must be held to have failed to give a valid reason for terminating the Claimant for misappropriating of Kshs.1,534,121/= while the Human Resource Committee that took him through the disciplinary proceedings found him not liable. The Respondent failed the provisions of Sections 43(1) and 45(1) of the *Employment Act*. Sections 43 of the *Employment Act* provides as follows:

43.

- (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.

Section 45(1) of the *Employment Act* state-

“(1) No employer shall terminate the employment of an employee unfairly.”

63. The Claimant in his dismissal letter of 4th January 2021 was dismissed after being absolved by the Human Resource Committee. Among the reason given for the dismissal was use of parallel receipt books and was involved in fraudulent collection of revenue amounting to Kshs.1,524,121 and his dismissal was effective 2nd October 2019.
64. The Respondent did not give any grounds to support their reason that the Claimant forged the receipt books and misappropriated Kshs.1,524,121/=. The Respondent failed the twin tests of giving



substantive justification and procedural fairness in terminating the Claimant. This is well set out in the case of *Walter Anuro Ogal -Vs- Teachers Service Commission (2013) KEELRC* “ Notwithstanding any other provision of this part an employer before termination the employment of an employee must give a valid reason. The court further stated that for termination to pass the fairness test it ought to be shown that there was not only substantive justification for termination but also procedural fairness.

65. The Respondent failed to give valid reasons of dismissing the Claimant and also did not follow the lawful mandatory procedure as provided in Section 41 of the *Employment Act*.
66. The court has considered the pleadings critically and the submissions, case laws and the law relating to Employment Laws and holds the Claimant was unfairly terminated from his employment. The court therefore enters judgment in his favour.
67. Reliefs awarded
 1. Unpaid salary in lieu of notices - Kshs.101,572/=.
 2. Court is not clear on gratuity and if not paid Respondent can deal as appropriate.
 3. Unpaid half salary from October 2019 to December 2020 - Kshs.711,004/=.
 4. The Claimant will not be reinstated to his position as three years have lapsed since he was terminated as mandated in Section 12(3)(vii) of Employment and *Labour Relations Act*.
 5. The Claimant is given 10 months salary equivalent instead as compensation Kshs.101,572 X 10 = Kshs.1,015,720/=.
68. Due to the nature and relationships between the parties
 - a. Each party will meet their respective costs.
 - b. Respondent is to pay interest on the above total award at 14% per annum from date of judgment till full payment.
- 69 Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 27TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE
JUDGE

