



**Cheptoo v Chairman, Music Copyright Society Ltd (Cause E717 of 2022) [2025] KEELRC 2103 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2103 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E717 OF 2022  
DKN MARETE, J  
JUNE 25, 2025**

**BETWEEN**

**AGNES CHEPTOO ..... CLAIMANT**

**AND**

**THE CHAIRMAN, MUSIC COPYRIGHT SOCIETY LTD ..... RESPONDENT**

**JUDGMENT**

1. The matter was originated by way of a Memorandum of Claim dated 3rd October, 2022. It does not disclose any matter in dispute on its face.
2. The Respondent in a Response to Memorandum of Claim dated 5th July, 2024 denies the claim and prays that it be dismissed with costs.
3. The Claimant's case is that she was employed by the 2nd Respondent on or about 1st July, 2010 as an Accounts Clerk and worked for eleven (11) years. She was promoted to the position of Finance Manger on 3rd May, 2021.
4. The Claimant's further case is that throughout her stint of service, she served zealously, dedicatedly and with commitment leading to immense growth of the organization to national status. Despite this and vide a letter dated 5th November, 2021, the Respondent terminated the Claimant's services wrongfully, unfairly and summarily. This was also unprocedural and without due processes, hearing or at all.
5. Hitherto, the claimant had been issued with a show cause letter and accused of a number of allegations to which she responded. A suspension letter dated 10th September, 2021 for one (1) month was made to enable un-explained investigations but she obliged. She was subsequently invited to a disciplinary committee on 30th September, 2021 to provide some clarifications on her response.



6. The Claimant avers that she was again invited on 30th September, 2021, when the claimant appeared before the said committee ready to give clarifications as earlier stated in the invitation letter. However, she was dictated a list of issues and directed to go and prepare a write up giving a response and or clarification on the issues dictated to her by the said committee. To the claimant's surprise and consternation no such hearing or proceedings ever took place as earlier indicated in her invitation letter.
7. The Claimant's other case comes out as follows; That she complied, prepared and delivered a comprehensive write-up on the issues dictated to her by the committee and delivered this on 5th October, 2021. That as she waited for questions or issues relating to a report, her suspension was extended for a further one month on grounds of an incomplete investigation. The 1st Respondent's email on this subject brought in an issue of legal audit which was not explained by the Respondent. This had also not been included in her show cause letter to which she had responded. She was summarily dismissed vide a letter dated 5th November, 2021. The dismissal was without hearing or an opportunity to be heard as alleged in the letter of such dismissal. The letter of dismissal purported to demand from the Claimant an amount of Kshs.352,874.67, an amount not explained to the Claimant. This action by the 1st Respondent was actuated by malice and clandestine, all with a view to removing the claimant from employment. This was also coupled with the letter arising out of the claimant's refusal to co-operate with the 1st Respondent's illegal and fraudulent actions of changing royalty payment figures or logs contrary to what was on record. That the second Respondent deducted the claimant's salary for amounts to be submitted to KRA (as PAYE deductions), Family Bank (for a loan secured by the claimant), UAP (Retirement Benefit Scheme), NSSF and others, which amounts were never submitted to the said bodies.
8. She claims thus;
  - a) Unpaid net salary for the month of January to December 2018.....Kshs.780,000.00
  - b) Salary Arrears for the Year 2019-2021.....Kshs 345,600.96
  - c) Leave allowance arrears for the years 2017-2021.....Kshs.451,000
  - d) 12 Months compensation for Unfair Termination.....Kshs. 3,513,296
  - e) Months Salary in fer of Notice November 2021-Jummary 2022....Kshs 903,324
  - f) Transfer Allowance Kisumu office to Head Office in Nairobi.....Kshs.44,600/
  - g) Total PAYE Deductions submitted to KRA Between 2019-2022 Kshs.319,951/
  - h) Retirement Benefits Funds deducted but not submitted to the Agent (UAPI.....Kshs. 523,333/
  - i. Family bank check aft Deductions Salary but not submitted 2015 -202.....Kshs.920,720/=
  - j) Music Sacco deductions but not remitted between 2017-2021.....Kshs.14,994.
  - k) NSSI Deductions not remitted to the Fund 2017-2019.....Kahs 3200

Total .....Kshs.8,048,010,61/-
9. She prays thus;



- i. A declaration that the termination of the Claimant's employment to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent herein was wrongful, unfair and un-procedural.
  - ii. Payment of Kshs. 8,048,010.61/-to the Claimant as per paragraph 25 above.
  - iii. General damages for wrongful and/or unfair termination of employment and/or breach of the parties employment contract.
  - iv. Any other appropriate relief as the Count may deem-fit-to-grant.
  - v. Costs of the suit.
10. The Respondent's case is a denial of the claim. It is her case that this suit is bad in law for misjoinder of parties.
  11. The Respondent further case is that the Claimant was appointed Finance, ICT and Distribution Manager with the 2nd Respondent on or about 3rd May, 2021. Her performance was not as colourful as pleaded and her growth is not attributable to the Claimant.
  12. The Respondent as a case is denial of malice or ill will in the termination of the claimant's employment and avers that this was actuated by breach of contract and also failure to observe the law and employment practices. The termination was done procedurally and in accordance with the dictates of employment law. It was proceeded by disciplinary proceeding that were conducted fairly and lawfully and in adherence to the rule of natural justice.
  13. The Respondent further avers as follows;The suspension of the Claimant during her disciplinary proceeding was in accordance with the 2nd Respondent Human Resource Manual and lawful.The Claimant was served with a show cause letter dated 21st August, 2021 detailing the reasons for disciplinary action.She was awarded adequate time to respond to the allegations made against her.The response being unsatisfactory, she was invited to a disciplinary committee meeting on 30th September, 2021 to clarify on the issues raised in response.The Claimant was found culpable during the disciplinary proceedings in view of the report of the Ad hoc committee.The decision to recover Kshs.352,874.67 was made after it became clear that the Respondent had lost this amount due to the Claimant's inaction and collusion.The termination letter of 5th November, 2021 explained the reasons for such termination.
  14. The issues for determination therefore are;
    1. Whether the termination of employment of the claimant by the 2nd Respondent was wrongful, unfair and unlawful.
    2. Whether the Claimant is entitled to the relief sought.
    3. Who bears to costs of this cause?
  15. The 1st issue for determination is whether the termination of employment of the claimant by the Respondents was wrongful, unfair and unlawful. The Claimant in her written submission dated 15th May, 2024 submits a case of unlawful termination of employment in contravention of section 41,43,44,45 and 47 of *Employment Act*, 2007. Foremost, she submits that the suspension and termination violated Articles 41 and 47 of *Constitution of Kenya, 2010*. She was denied her right to participate in and be accompanied by a co-employee during the hearing. She was also denied an opportunity to cross-examine the Respondent's witnesses. She was not paid her terminal dues either.



16. The Respondent in rejoinder submits that the termination was prompted by gross misconduct on the part of claimant. It is her case that the claimant's termination of employment was based on a consideration of submissions made in answer to show cause letter and the interrogation on her part by the Respondent. These established that the claimant misconduct was gross and dereliction of duty, poor service delivery and failure to give factual information. Due process was therefore afforded to the claimant. Again, at the disciplinary proceeding, it was discovered that the claimant had directly or indirectly lead to the Respondent's loss of Kshs.352,874.67 which issue was highlighted in the termination letter but was not basically the ground for termination.

17. Other omissions on the part of the claimant includes but are not limited to;A dereliction of her duty as Finance Manager in verifying the member list before payments, this she did not do leading to erroneous payment to Member No. 14478 and Member No. 14917In furtherance of her laxity, the Board members came to learn that more than one thousand two hundred members were double paid during February, 2020 distribution in the tune of over Kshs 1,200,000 (One Million Two Hundred Thousand (See page 79 of the Respondent's bundle of documents)In response to the third allegation (see page 1 of the response), the Claimant indicates that-

The only reversal made during the period was a general distribution payment done, dated 5th August 2021, mistakenly for Member No. 14478 Kshs.1057.62 and member No.14937 Kshs. 1,057.62 and amounting to Kshs 2.115.24 and upon realization...

Essentially, (as above), the Claimant acknowledged unauthorized payment of royalties and reversing of the same. The Claimant in her statement reverts to minimizing the act by using the words "only reversal" and "the Society suffered no prejudice or financial loss". The Claimant failed to consider that such conduct portrayed a bad picture of the society as ineffective and careless.The Human Resources Policies and Procedures Manual, which the Claimant was bound to and well aware of provides that MCSK staff will ensure that their conduct does not jeopardize the credibility of the organization. In making unauthorized payments and subsequently reversing them, the credibility of the organization was put in question. (Contained in page 47 of the Respondent's bundle of documents).Section 43 which forms the foundation of the substantive test hereinabove submitted on, provides thus:-

43. Proof of reason for termination

- (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

18. The Respondent especially emphasizes and relies on section 43(2) of the *Employment Act*, 2007 and authority of *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR where the standard of genuine belief in the exist of the facts leading to termination existed in the mind of the employer. Besides, the Respondent banks on the authority of *Kenya Revenue Authority v Reuwel Waitihaka Gitahi & 2 others* [2019] eKLR where the Court of Appeal restates this position.

19. The Respondent's case overwhelms that of the claimant. It establishes a case of lawful termination of employment on a balance of probabilities. It is clear that the termination of employment of the claimant was borne out of her laxity and malfeasance in the conduct of her duties leading to massive loss on the part of the Respondent. She was taken through appropriate disciplinary proceeding with a commitment to due process. She cannot therefore be heard to cry that she was wrongfully and or



unlawfully termination from employment. I therefore find a case of lawful termination of employment and hold as such. And this answers the 1st issue for determination.

20. The 2nd issue for determination is whether the claimant is entitle to the relief sought. She is not. On a finding of lawful termination of employment he becomes disentitled to the relief sought.

21. I am inclined to dismiss the claim with orders that each parties bears their costs of the claim.

**DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Odhiambo instructed by Jim Odhiambo & Company Advocates for the Claimant.

Mr. Musyoka instructed by Okubasu & Munene Advocates for the Respondent.

