



**Ombiri v Kenya Forest Service (Cause E006 of 2024)
[2025] KEELRC 1813 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1813 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E006 OF 2024
NZIOKI WA MAKAU, J
JUNE 23, 2025**

BETWEEN

WILSON OKANDA OMBIRI CLAIMANT

AND

KENYA FOREST SERVICE RESPONDENT

JUDGMENT

1. The Claimant instituted these proceedings by way of a Memorandum of Claim dated 29th January 2024, alleging unlawful dismissal from employment. He sought payment of Kshs. 5,782,080/- representing salary arrears for the period between June 2021 and December 2023, pension dues, Kshs. 1,500,000/- as terminal dues, together with costs and interest of the suit. He averred that he had been employed on 1st November 1988 and was subsequently promoted to the position of Chief Forester in 2009. According to him, he served diligently until 10th June 2021, when he received a letter accusing him of diverting and failing to account for Kshs. 3,086,500/- from the Kisumu Ecosystem bank account. He was also accused of forging a transfer letter, which allegedly resulted in inflated transfer allowances. It was the Claimant's averment that that the disciplinary hearing which followed was unfair and violated his right to a fair process. He asserted that his accusers were not present during the hearing and that the board failed to provide any written statements from them. He further claimed that the allegations were baseless and were merely being used as a pretext to unlawfully withhold his pension and salary from June 2021 to 2023.
2. In response, the Respondent filed a Response to Memorandum of Claim and Counterclaim dated 21st May 2024. The Respondent acknowledged that the Claimant was appointed Chief Forester, Grade 5, on 30th November 2010. It stated that the Claimant was transferred to the Conservancy Head Office in Ewaso North and, pursuant thereto, was released to his new post on 15th December 2020. However, upon inquiry by the Senior Internal Auditor on 20th May 2021, the Head of Conservancy Nyanza disclaimed the authenticity of the Claimant's transfer letter, stating it was a forgery. The Respondent



further averred that an internal audit conducted on 21st May 2021 revealed that Kshs. 3,086,500/- had been withdrawn by the Claimant in the form of imprest and subsequently diverted. It asserted that the funds remained unaccounted for, as the imprest warrants used in the withdrawal were never expensed in the cash book. As a result of this gross misconduct, the Claimant was interdicted on half pay and given 21 days to respond. He replied on 29th June 2021, seeking three weeks to provide an account for the funds. The Respondent averred that the Claimant failed to give a satisfactory account, and the disciplinary committee, on 17th August 2022, recommended that the amount be recovered from his salary. Following a disciplinary hearing held on 26th October 2022, the Claimant was dismissed by letter dated 2nd December 2022.

3. The Respondent also pointed to previous acts of misconduct by the Claimant, including his interdiction on 23rd August 2013 for failure to supervise office renovations, which led to a loss of Kshs. 1,332,517/-, and for misappropriating Kshs. 1,979,000/- due to a failure to maintain proper accounting records, for which he was surcharged and reprimanded.
4. In its Counterclaim, the Respondent relied on section 71(4) of the *Public Finance Management Act* to justify deductions from the Claimant's salary since August 2022. It maintained that a balance of Kshs. 2,694,702/- remained unpaid and thus sought judgment for that amount plus interest until full payment. The Respondent further prayed for a declaration that it was entitled to recover the outstanding sum from the Claimant's terminal dues and pension.
5. In his defence to the Counterclaim, the Claimant denied any allegations of embezzlement and maintained that no conclusive disciplinary proceedings had found him culpable. He emphasized that his request to provide an account was not an admission of liability, but only an opportunity to set the record straight. It was the Claimant's averment that he was denied access to crucial documents detailing the alleged embezzlement and was barred from accessing his office, thereby hampering his ability to mount a proper defence. It was his further case that the internal audit report was never availed to him during the disciplinary hearing and that he was seeing it for the first time in court. Additionally, he asserted that neither the internal auditor nor the officers who made the adverse findings or authored the incriminating letters appeared at the disciplinary hearing.
6. Ultimately, on 2nd April 2025, after several adjournments owing to the Claimant's indisposition, the parties agreed to have the matter disposed of by way of written submissions in terms of Rule 59 of the Rules of this Court.

Claimant's Submissions

7. The Claimant submitted that the bulk of the information purportedly used to implicate him was not made available during the disciplinary hearing. He drew the Court's attention to paragraph 6 of the Respondent's response to the memorandum of claim, which alleged embezzlement in the year 2022. However, the counterclaim referenced alleged embezzlement between 2019 and 2021. He asserted that the statements of account presented were not certified and did not disclose the identity of the person(s) who prepared them.
8. It was the Claimant's further submission that the individuals responsible for preparing the statements and the imprest were not summoned before the disciplinary committee to substantiate their findings. With regard to the alleged conspiracy between himself and one Denis Cheruiyot to misappropriate funds, the Claimant argued that the said Mr. Cheruiyot was not called to testify, denying him the opportunity to test the evidence through cross-examination. The Claimant also submitted that the alleged loss of Kshs. 2,013,856/-, which formed the basis for his dismissal, was not part of the charges



that had been placed before the disciplinary committee. He asserted that introducing such an allegation at a later stage undermined the fairness and transparency of the process.

9. On the issue of alleged fraudulent transfer, the Claimant denied the claim and maintained that the assertion was baseless. He submitted that the claim of fraud was inconsistent with the fact that a replacement officer had been sent to take over his role. Furthermore, the officers who had written letters purporting to impugn the legitimacy of his transfer were not called to testify during the disciplinary proceedings.
10. Regarding the overall disciplinary process, the Claimant maintained that it was conducted in breach of the law and contrary to the Respondent's own Human Resource Policy and Procedures, which prescribe a six-month period for conclusion of disciplinary matters. He relied on sections 3, 4(3), and 4(4)(b) of the *Fair Administrative Action Act*, which guarantee a right to adequate notice of the intended administrative action, an opportunity to be heard, and the right to attend proceedings and cross-examine persons presenting adverse evidence. In further support of his position, he cited the decision in *Barmao v G4S Kenya Limited (Cause E184 of 2021) [2024] KEELRC 1141 (KLR)*, where the Court emphasised the necessity for strict adherence to the fair procedure contemplated under section 45(2) of the *Employment Act*. In light of the foregoing, the Claimant urged the Court to find that the disciplinary process was fatally flawed and that he was denied a fair hearing. He accordingly prayed for the reliefs sought in his claim to be granted.

Respondent's Submissions

11. The Respondent submitted that the Claimant was interdicted through a letter dated 10th June 2021, following an internal audit report dated 21st May 2021, which revealed a failure to account for Kshs. 3,086,500/- and falsification of a release letter. It asserted that the Claimant responded on 29th June 2021, requesting three weeks to provide documentation, and also denied allegations of forgery. It was its further submission that despite a further reminder on 8th June 2022, the Claimant allegedly failed to account for the funds. Consequently, the Respondent began recovering the amount from the Claimant's salary pursuant to Clause 7.1 of the Imprest Policy and the *Public Finance Management Act*. It asserted that disciplinary proceedings were thereafter initiated, and the Claimant was invited to appear before the Disciplinary Committee. After an initial failure to attend citing illness, he eventually appeared on 26th October 2022. Following the hearing, it was resolved to summarily dismiss him on 2nd December 2022, citing both the alleged embezzlement and a prior history of financial misconduct.
12. The Respondent submitted that the dismissal followed due process and that valid reasons supported the action. They further asserted that during interdiction, the Claimant received half salary plus full allowances as per Clause 11.6.2 of the Human Resource Manual, and thus was not entitled to any further salary for the year 2023, as he was no longer in service. They also noted that pension dues were handled by a separate entity, Fanaka Zamara Retirement Plan, and had already been paid out. The Respondent also opposed the claim on terminal dues under section 49 of the *Employment Act* for lack of evidence of wrongful dismissal.
13. The Respondent further submitted that the Claimant's conduct contributed to his dismissal. They pointed to his prior disciplinary history, including interdictions in 2013 for supervision failures that caused financial losses, a surcharge of over Kshs. 2 million, and allegations in 2018 of causing pecuniary embarrassment by borrowing and failing to repay funds. In opposing the reliefs sought, the Respondent urged the Court to consider the Claimant's overall conduct. They relied on the decision in the case of *Josiah Magena v Wakenya Pamoja Sacco Society Ltd [2017] eKLR*, where the Court declined to award compensation despite procedural injustice, on account of the Claimant's chequered record.



14. In respect of the counterclaim, the Respondent submitted that the Claimant, through a letter dated 23rd January 2023, admitted to owing Kshs. 3,086,500/- and proposed a repayment plan. This, it argued, constituted an admission of liability. By the time of dismissal, the balance outstanding was Kshs. 2,694,702.25. They maintained that the funds had not been surrendered or accounted for as required by the *Public Finance Management Act*, and that the amount was therefore recoverable from the Claimant's entitlements. In conclusion, the Respondent submitted that the Claimant was fairly dismissed for gross misconduct, that the claim lacked merit, and that the Court should award the Respondent the outstanding amount in the counterclaim together with the costs of the suit.

Disposition

15. The common cause is that the Claimant was employed by the Respondent and was dismissed in 2022 for alleged misappropriation of funds. The Respondent by way of counterclaim sought the refund of sums said to be owed. The Claimant denied owing the sums claimed. In relation to the termination of the Claimant, the evidence and submissions show that the Claimant was given a show cause letter to which he responded and was subsequently given a hearing.
16. It all begun with the ostensible transfer of the Claimant to the Conservancy Head Office in Ewaso North. Pursuant to the letter purporting to transfer the Claimant, he was released to his new post on 15th December 2020. However, upon inquiry by the Senior Internal Auditor on 20th May 2021, the Head of Conservancy Nyanza disclaimed the authenticity of the Claimant's transfer letter, stating it was a forgery. Later, an internal audit conducted on 21st May 2021 revealed that Kshs. 3,086,500/- had been withdrawn by the Claimant in the form of imprest and subsequently diverted. It asserted that the funds remained unaccounted for, as the imprest warrants used in the withdrawal were never expensed in the cash book. As a result of this gross misconduct, the Claimant was interdicted on half pay and given 21 days to respond. He replied on 29th June 2021, seeking three weeks to provide an account for the funds. The failure by the Claimant to give a satisfactory account led to the disciplinary committee recommending on 17th August 2022, that the amount be recovered from his salary. Following a disciplinary hearing held on 26th October 2022, the Claimant was dismissed by letter dated 2nd December 2022. The disciplinary process followed the dictates of the law and led to a fair result. It cannot be faulted save for an issue the Court will advert to shortly. The termination was proper and within the confines and bounds of the law and the Court upholds it. The Court notes the pension dues have been paid and/or continue to be paid as they ought.
17. On the counterclaim, the position of the Respondent is that the Claimant owed it a sum of Kshs. 2,694,702.25. This sum was unsupported and as such cannot be ordered to be repaid. The Claimant's request to provide an account was not an admission of liability, but only an opportunity to set the record straight. Further, the Claimant was denied access to crucial documents detailing the alleged embezzlement. He was barred from accessing his office, significantly hampering his ability to mount a proper defence. The Claimant asserted without reply that the internal audit report was never availed to him during the disciplinary hearing and that he was seeing it for the first time in court. Additionally, he asserted that neither the internal auditor nor the officers who made the adverse findings or authored the incriminating letters appeared at the disciplinary hearing.
18. It is my finding therefore the Respondent's counterclaim is unsuccessful. In the final result, the Court finds both the Claimant's claim and the Respondent's suit by way of counterclaim are unproved. They are dismissed with no orders as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2025.



NZIOKI WA MAKAU, MCIArb.

JUDGE

