



**Mukora v National Industrial Training Authority & another (Cause 32 of 2019) [2025] KEELRC 2007 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2007 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 32 OF 2019**  
**HS WASILWA, J**  
**JUNE 19, 2025**

**BETWEEN**

**TERESIA NDUITA MUKORA ..... CLAIMANT**

**AND**

**NATIONAL INDUSTRIAL TRAINING AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**THE PUBLIC SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide an Amended Statement of Claim dated 15<sup>th</sup> December 2024 for wrongful and unfair termination of his employment contract and prays for judgment against the Respondents for:
  - a. Kshs.23,068,881.00/=
  - b. In the alternative, the Court be pleased to order for the Claimant's unconditional reinstatement into the position of Chief Industrial Training Officer without loss of benefits.
  - c. Certificate of service be issued to the Claimant within 14 days.
  - d. Costs and interest of this cause.
  - e. Any other relief which the court deems fit, just and expedient to grant.

**Claimant's Case**

2. The Claimant avers that she was initially employed with the Ministry of Public Works on 5<sup>th</sup> December 1985 as an Electrical Wireman 1 on Job Group F; and over the years she was promoted severally and ultimately in 2004, she was promoted to the position of Senior Industrial Trainer in the Ministry of Labour, Directorate of Industrial Training and later promoted to Chief Industrial Trainer Officer.



3. The Claimant avers that in 2011, the Department of Directorate of Industrial Training was converted into a state corporation and she was absorbed into the Respondent under the terms in the Ministry. She was employed by the Respondent as a Chief Industrial Training Officer at a basic salary of Kshs. 69,528 per month plus house allowance and commuter allowance of Kshs. 55,000 and Kshs. 20,000 respectively.
4. The Claimant avers that she was meant to retain the terms she enjoyed in the Ministry subject to career guidance which was to place her under Grade 11, a Chief Industrial Trainer at a basic salary of Kshs. 100,000 plus house allowance of Kshs. 55,000 and commuter allowance of Kshs. 20,000. Instead, the Respondent refused to adjust the term and placed her under the old terms for Grade 8 to which she shall claim underpayment.
5. The Claimant avers that she was under paid salary and allowance from 9<sup>th</sup> July 2013 to 26<sup>th</sup> August 2020 when the 2<sup>nd</sup> Respondent determined her appeal.
6. The Claimant avers that she was transferred from her Nairobi workstation to Mombasa Industrial Training Centre on 2<sup>nd</sup> March 2015 in the Electrical section. She was given three days' notice and she reported to the Centre Manager on 5<sup>th</sup> March 2015 and immediately applied for her annual leave with effect from 10<sup>th</sup> March to 20<sup>th</sup> April 2015. However, the transfer was contrary to the provisions of Section 0.25 of the Public Service Commission Code of 2006 which requires notice of at least one month and not more than three months to prepare for transfer.
7. The Claimant avers that when she reported back from leave on 20<sup>th</sup> April 2015, the Centre Manager refused to deploy her and she went to the Electrical Section and requested to be assigned duties in the Section Order where she worked awaiting deployment until 8<sup>th</sup> July 2015.
8. On May 2015, the Claimant realised there was a problem with the curriculum which was not matching the facility and the recruited students; she raised the issue in a staff meeting and proposed for a change of curriculum which was supported by other members of the staff. However, this did not sit well with her bosses as she started receiving letters geared towards her dismissal.
9. On 8<sup>th</sup> July 2015, the Claimant received four letters from her immediate boss (the Centre Manager): the first one was headed 'ABSENCE FROM DUTY' indicating she had been absent from duty on 2<sup>nd</sup> and 3<sup>rd</sup> July 2015 without permission and was issued with a written warning; the second was headed 'ABUSIVE LANGUAGE' indicating that on 23<sup>rd</sup> June 2015, she used abusive language to Mr Jasan Kamau, a driver stations at MITC by calling him takataka and she was issued a written warning; the third was headed 'MISCONDUCT' indicating on 6<sup>th</sup> July 2015, when receiving a verbally warning on her alleged misconduct, she walked out loudly banging the door behind her; and the fourth was headed 'CLOCKING IN SYSTEM' indicated even after receiving a warning, she had not adhered to the requirements of clocking in and ordered to begin clocking in with immediate effect.
10. The Claimant avers that on 14<sup>th</sup> July 2015, she received another letter from the 1<sup>st</sup> Respondent's Director General headed 'GROSS MISCONDUCT' which laid down the content of the aforementioned letters.
11. In the letter, the Respondent falsely accused her of refusing to obey lawful a order and refusing to be appraised by her supervisor and failing to clock on duty; and that since May 2015, the Claimant incited staff and students against management and sabotaged the Authority's policies. Further, the Respondent accused her that on 23<sup>rd</sup> June 2015, she used insulting language to a co-worker Jason Kamau and that she submitted untyped examination papers against NITA examination procedure.



- The letter then interdicted her on half salary less statutory deductions and she was required to report to the centre manager once every week.
12. The Claimant avers that she responded to the misconduct allegations vide a letter dated 21<sup>st</sup> July 2015 denying all the allegations.
  13. The 1<sup>st</sup> Respondent's Director General responded vide a letter dated 28<sup>th</sup> August 2015 indicating that the management had reviewed the Claimant's response and noted she had not addressed the allegations substantially, however, she was pardoned and warned to desist from violating its rules and regulations and the interdiction was uplifted with the warning.
  14. Subsequently, on 13<sup>th</sup> October 2015, she received a letter of reinstatement back to work vide a letter dated 28<sup>th</sup> August 2015. The letter was received by the Centre Manager, Mr. Elkana Kurundi, on 14<sup>th</sup> September 2015.
  15. It is the Claimant's case that during her interdiction, she faithfully reported to the Centre Manager as directed in the interdiction letter including on 14<sup>th</sup> September 2015, however, when the Manager received the reinstatement letter, he maliciously refused to deliver the same and hid it until 13<sup>th</sup> October 2015.
  16. The Claimant avers that she responded by putting it straight she was being pardoned for what she had not done and sought clearance on how she was to work since there was no curriculum to guide her in her new assignment of teaching in which the Director of Industrial Training advised her to wait as they consult with the Director General on curriculum which was not marching the facility.
  17. The Claimant avers that on 10<sup>th</sup> November 2015, she received another letter headed 'MISCONDUCT' alleging she had absented herself without leave or lawful cause from 28<sup>th</sup> August 2015 and she was directed to show cause within 21 days. She responded vide a letter dated 19<sup>th</sup> November 2015, explaining she had not absented herself from work and she was on duty reporting to the Respondent's Director of Industrial Training in Nairobi who advised her to wait as he consulted. She argues that it was the Director of Industrial Training's role to deploy her but he refused as a setup to use the same excuse of absenting herself from work without leave to dismiss her.
  18. Vide a letter dated 5<sup>th</sup> January 2016, the Claimant was invited for a disciplinary meeting on 11<sup>th</sup> January 2016 at MITC which was later rescheduled vide an email to 12<sup>th</sup> January 2016. However, the email was maliciously doctored to mislead her to refuse to attend the meeting.
  19. The Claimant avers that during the hearing, there was no quorum as the Centre Manager and her accuser, the Director of Industrial Training and the Human Resource Manager who walked out when she raised the issue of quorum. She also raised the issue on non-availability of the other heads of departments as required in Section 10.25 of the Respondent's Human Resource Policy and Procedure Manual, 2015.
  20. It is the Claimant's case that she was subjected to an inferior disciplinary committee comprising of member of management yet at her level as Chief Industrial Training Officer she was supposed to be disciplined by the Board which was her appointing authority pursuant to the provisions of Section 2 of the Industrial Training (Amendment) Act, 2011.
  21. The Claimant submitted that no hearing took place on 12<sup>th</sup> January 2016 as there was no quorum as only two members of the Disciplinary Committee who were accusers were present instead of 10 heads of department as required by the HR Manual yet the Respondent lied to the Office of the Ombudsman about quorum. The Legal Manager was away attending a course at the Kenya School of Government in Nairobi whereas another the KTTI Manager had given apology for not attending. The rest were



- never invited for the disciplinary hearing. Therefore, she was denied a chance to orally submit her case or attend the hearing alongside a fellow colleague.
22. On 1<sup>st</sup> February 2016, she received a letter of dismissal which she appealed on 15<sup>th</sup> February 2016 to the Director General and she received a response dated 22<sup>nd</sup> April 2016 in which her appeal was dismissed. She filed a second appeal on 1<sup>st</sup> September 2016 to the Chairman of the 1<sup>st</sup> Respondent's Board from which she has never received any response from the board despite writing a reminder on 17<sup>th</sup> June 2018.
  23. The Claimant filed another appeal on 24<sup>th</sup> January 2017 to the 2<sup>nd</sup> Respondent which it responded on 31<sup>st</sup> January 2017 advising her to handle the matter as per the Public Service Commission Delegation Instrument for State Corporation Advisory Committee and update it on the same.
  24. She went to the office of the State Corporation Advisory Committee and after several visits and a reminder sent on 15<sup>th</sup> August 2019; the 2<sup>nd</sup> Respondent vide a letter dated 26<sup>th</sup> August 2020 in which her appeal was dismissed on the basis that it did not raise any convincing grounds to warrant an appeal.
  25. The Claimant avers that on 3<sup>rd</sup> September 2019, alongside other dismissed employees, they wrote to the Principal Secretary, Ministry of Labour demanding a report on the system audit and ministerial task force which exonerated them but the ministry has to date failed and/or refused to release the report in violation of her constitutional right to information under Article 35 of *the Constitution*.
  26. The Claimant eventually received the 1<sup>st</sup> Respondent's Board decision on 22<sup>nd</sup> July 2021 which denied her a hearing on appeal and referred her back to NITA management whose decision was subject of Appeal.
  27. The Claimant avers that at the time of dismissal, she was aged 51 years and was remaining 9 years to retire at the mandatory retirement age of 60 years in the year 2024.

### **1<sup>st</sup> Respondent's Case**

28. The 1<sup>st</sup> Respondent avers that Claimant was employed as Chief Industrial Training Officer on 9th July 2013, with a total salary of Kshs. 144,528, and was assigned to report to the Centre Manager at Mombasa Industrial Training Centre (MITC). A position she held until 1<sup>st</sup> February 2016 when she was dismissed from employment for desertion of duty.
29. The 1<sup>st</sup> Respondent avers that on 8<sup>th</sup> July 2015, the Centre Manager issued the Claimant a formal warning due to her repeated absenteeism, disrespectful behaviour, and failure to follow workplace policies.
30. Subsequently, on 14<sup>th</sup> July 2015, the Director General issued her a show-cause letter addressing allegations of absenteeism, offensive language, insubordination, and inciting staff and students against management. As a result, the Claimant was placed on interdiction, receiving half of her salary, and was required to report weekly to the Centre Manager while the matter was under investigation.
31. The 1<sup>st</sup> Respondent avers that the Claimant responded to the letter of interdiction on 21<sup>st</sup> July 2015 and denied all allegations against her. In response, the Director General vide a letter dated 28<sup>th</sup> August 2016 informed her of the 1<sup>st</sup> Respondent's management's findings which found she had failed to address the allegations substantively. Notwithstanding the findings, the Claimant was pardoned and warned to desist from further violations and the interdiction lifted.



32. The 1<sup>st</sup> Respondent avers that the Claimant was assigned duties in the Electrical Section on 14<sup>th</sup> September 2015, but she refused the assignment on 13<sup>th</sup> October 2015, citing the assigned duties were not in line with her job description and questioning the decision to pardon her.
33. The 1<sup>st</sup> Respondent avers that after lifting the interdiction, the Centre Manager MITC wrote to the Director General vide a letter dated 7<sup>th</sup> October 2015 informing him of the Claimant's absenteeism from duty. Further, vide a memo dated 25<sup>th</sup> October 2015 by the Manager HR & Admin to the Director General, it was reported that the Claimant's action was in breach of the HR Policy & Procedures Manual and recommended the Claimant be dismissed or further disciplinary measures be taken against her.
34. Following the recommendation by the Manager HR & Admin, the Director Genal issued the Claimant a notice to show cause letter dated 10<sup>th</sup> November 2015, which she responded to on 19<sup>th</sup> November 2015. Subsequently, the Director General instituted a disciplinary process against the Claimant vide a Memo dated 3<sup>rd</sup> December 2015. The disciplinary committee sat and heard the case on 12<sup>th</sup> January 2016.
35. It is the 1<sup>st</sup> Respondent's submissions that on 12<sup>th</sup> January 2016, the Claimant provided her defence and made oral submissions admitting she deserted duty from 28<sup>th</sup> August 2016. The disciplinary committee found the Claimant guilty of absenteeism without leave and recommended her immediate dismissal for desertion of duty. On 1st February 2016, the Director General upheld the dismissal decision and wrote to the Claimant conveying the 1<sup>st</sup> Respondent's findings and decision to dismiss her on account of desertion of duty and also informed her of her right to appeal.
36. The 1<sup>st</sup> Respondent avers that the Claimant appealed the decision on 15<sup>th</sup> February 2016. The appeal was heard on 16<sup>th</sup> March 2016 and the committee upheld the decision and recommendation by the disciplinary committee to dismiss the Claimant's employment. Consequently, on 22<sup>nd</sup> April 2016, the Director General issued a final confirmation of the dismissal, prompting the Claimant to file a formal complaint with the Commission on Administrative Justice (CAJ).
37. The 1<sup>st</sup> Respondent avers that the CAJ upheld the dismissal on 16<sup>th</sup> August 2016 by concluding that the Claimant's actions amounted to desertion of duty and that due process had been followed.
38. Finally, the Claimant lodged an appeal to the Public Service Commission which was rejected on 26<sup>th</sup> August 2020, as no sufficient grounds were found to overturn the dismissal decision.

## **2<sup>nd</sup> Respondent's Case**

39. In opposition to the Claim, the 2<sup>nd</sup> Respondent filed a Statement of Response dated 26<sup>th</sup> September 2024.
40. The 2<sup>nd</sup> Respondent avers that the Claimant lodged an appeal against her dismissal from the service by the 1<sup>st</sup> Respondent. The Commission considered the appeal and dismissed it on the grounds that there were no justifiable grounds. Subsequently, the decision on appeal was duly communicated to the Claimant vide a letter dated 26<sup>th</sup> August 2020.
41. The 2<sup>nd</sup> Respondent avers that the exercise of disciplinary control in the first instance in respect of the Claimant is vested in the Board of the 1<sup>st</sup> Respondent; and the Claimant was taken through a lawful disciplinary process that eventually led to her dismissal from the service.
42. It is the 2<sup>nd</sup> Respondent's case that the exercise of disciplinary control in respect of the Claimant was lawfully undertaken by the 1<sup>st</sup> Respondent and the Commission in strict conformity with the



dictates of the Constitution, Part XII of the PSC Act, 2017, Part IX of the PSC Regulations, the Fair Administrative Action Act, 2015 and the attendant Manuals.

43. The Respondent avers that the Claimant has not demonstrated how the above legal requirements have not been complied with during the alleged disciplinary processes that she was taken through by the 1<sup>st</sup> Respondent.
44. The 2<sup>nd</sup> Respondent avers there were valid and justifiable reasons to dismiss the Claimant from the service and the allegations of unfairness and violation of the Claimant's fundamental rights and freedoms have not been proved at all.
45. It is the 2<sup>nd</sup> Respondent's case that reliefs for underpayment have been made out of time in view of the limitation period prescribed under the Employment Act; and the claim for future earnings are without any merit.
46. The 2<sup>nd</sup> Respondent avers that the Claimant has not proved any violation of her constitutional rights and fundamental freedoms as alleged as her claim is couched in generalities without being pleaded with any degree of specificity. However, it did not oppose the claim for issuance of a Certificate of Service.

### **Evidence in Court**

47. The Claimant (CW1) adopted her witness statement dated 22<sup>nd</sup> January 2019 as her evidence in chief and produced her filed documents dated 22<sup>nd</sup> January 2019 and further list of documents dated 8<sup>th</sup> November 2024 as her exhibits.
48. During cross-examination, CW1 testified that she never absconded duty.
49. CW1 testified that the curriculum did not match the facility; he approached the Director of Industrial Training and he advised her hold on as they prepare the curriculum. The curriculum came out after she was dismissed.
50. CW1 testified that the 2<sup>nd</sup> Respondent directed her to the State Corporations Advisory Committee (SCAC), however, it did not have the power to handle her case.
51. CW1 testified that she was developing a curriculum in Nairobi and she had no authority over the Centre Manager but he was aware.
52. CW1 testified that she looked for justice from the Office of the Ombudsman and the Commission of Administrative Justice to investigate the matter.
53. The Respondents' witness Gerald Kirimi (RW1) testified that he is a director of the 1<sup>st</sup> Respondent and adopted his witness statement dated 16<sup>th</sup> May 2024 as his evidence in chief and produced the list of documents dated 3<sup>rd</sup> May 2024 as his exhibits 1-24.
54. During cross-examination, RW1 testified that the minutes of the disciplinary hearing produced do not show the Claimant attended the hearing.
55. The Respondent's second witness, John Kimani (RW2) testified he works as a Director, Human Resources Management for the 2<sup>nd</sup> Respondent. He adopted his witness statement dated 26<sup>th</sup> September 2024 as his evidence in chief and produced the documents attached as his exhibits.
56. During cross-examination, RW2 testified that the 2<sup>nd</sup> Respondent referred the appeal to SCAC when it had delegated to hear appeals to SCAC.



## Claimant's Submissions

57. The Claimant submitted on three issues: whether the Respondent proved the reason for termination of the Claimant's employment; Whether the dismissal of the Claimant from Employment on 16th February 2016 was lawful, for valid reason and or procedurally fair; and whether the Claimant is entitled to the remedies as prayed for in the Memorandum of claim.
58. On the first issue, the Claimant submitted that the 1<sup>st</sup> Respondent did not call any witness to testify and justify the reason, validity of the reason and fair procedure leading to dismissal despite filing a Statement of Defence. The 1<sup>st</sup> Respondent's defence remains allegations remains mere allegations and Claimant's evidence on unfair dismissal uncontroverted.
59. It is the Claimant's submission that the 1<sup>st</sup> Respondent failed to discharge its obligations under section 43 of the Employment Act to prove reason for dismissal in the instant case either by demonstration of the efforts made to trace her to report to work or by tendering evidence in support of the response. It is the Claimant's case that she did not absent herself from duty as the letter dated 28<sup>th</sup> August 2015 pardoning her was received by her on 12<sup>th</sup> October 2015; and at the time there was an issue of curriculum which she was dealing with and had been asked to be reporting at the office of the Director Industrial Training, Nairobi and that both the Director of Industrial Training and the Director General were both aware of her status.
60. She further argues that prior to receiving the show cause notice dated 10<sup>th</sup> November 2015, she did not receive any letter of correspondence from the 1<sup>st</sup> Respondent calling upon her to report to work or explain absence; and even after receiving the show cause, she never received any such correspondence, therefore, the 1<sup>st</sup> Respondent never made any effort to trace the Claimant and by extension failed to prove the reason for dismissal.
61. On the second issue, the Claimant submitted that invitation to the disciplinary hearing dated 5<sup>th</sup> January 2016 did not indicate the requirement for her to attend the hearing alongside a fellow worker. When she appeared for the disciplinary hearing, the members of the Disciplinary Committee present did not meet the quorum of all 10 heads of department and be chaired by an appointee of the Director General with the head of human resource management and administration as the secretary to the committee as provided for under Section 10.1.2 of the 1<sup>st</sup> Respondent's Human Resource Policy and Procedure Manual.
62. Only three members of the disciplinary committee attended namely the Director of Industrial Training to whom she was reporting at the time she is alleged to have absented herself from duty without leave, a Centre Manager MITC who raised the issue of absence from duties and the manager HR and administration who was supposed to be the secretary to the meeting
63. The Claimant submitted that the committee as constituted did not have jurisdiction to hear and determine her case as she was employed in Grade 11 a senior management level pursuant to Section 2.9 Human Resource Policy and Procedure Manual by the Board of Directors and her case could only be heard and determined by the Board.
64. The Claimant submitted that the disciplinary hearing of the was un-procedural and unfair and did not meet the procedural requirements of Section 41 of the Employment Act.
65. It is the Claimant's submission that the minutes dated 3<sup>rd</sup> May 2024 was not a true representation of the Disciplinary Committee proceedings as. The Claimant's name was not entered on the list of attendees yet she did attend. Additionally, it falsely represented that she gave orally admitted to have deserted



- duties from 28<sup>th</sup> August 2015 yet she never tendered any oral evidence as the meeting was disbanded before the hearing commenced. This amounts to doctoring the minutes to justify the dismissal as no hearing took place on 12<sup>th</sup> February 2016 and the cannot override the requirements of Section 41 of the [Employment Act](#) which is mandatory.
66. The Claimant submitted that the minutes were further doctored to introduce evidence of 6 other witnesses namely Joseph Kinuthia, Festo Munga, John Chirchir, Jenifer Sijenyi, Henry Zero and Mwakio Mwashio who testified at the meeting and were not indicated as attendees in the meeting and did not attend the said meeting. This amounts to falsification of records contrary to the provisions of Sections 74 and 75 of [Employment Act](#) which requires the employer to keep truthful records of the employees including minutes of the disciplinary hearing and produce when required.
  67. It is the Claimant's submissions that summary dismissal of her employment was unfair and wrongful for want of a valid reason and through a flawed process contrary to the provisions of Section 45 of [Employment Act](#). The 1<sup>st</sup> Respondent failed in its evidence to prove the reason, the validity of the reason and fairness of the procedure it followed culminating into dismissal of the Claimant's employment.
  68. The Claimant submitted that the Appeals Disciplinary Committee for hearing held on 16<sup>th</sup> March 2016 was incompetent as it constituted of the Manager Levy Administration, Chief Enterprise and Marketing , Ag Manager Finance and Senior Legal Officer all of whom were junior in rank to the members of the Disciplinary Committee and the Claimant. Additionally, the minutes of the Appeals Committee hearing confirms that it contains the same contents of the doctored minutes of the Disciplinary Committee.
  69. It is the Claimant's submission that the decision of the Appeals Committee upholding her dismissal was a nullity for want of jurisdiction.
  70. The Claimant submitted that her subsequent complaint with the Commission on Administrative Justice was dismissed because of the 1<sup>st</sup> Respondent's misrepresentation of facts on the composition of the disciplinary committee which sat on 12<sup>th</sup> January 2016 as comprising 5 members instead of 3 who actually attended.
  71. The Claimant submitted that she filed an appeal to 2<sup>nd</sup> Respondent on 24<sup>th</sup> January 2017; the appeal was transferred to SCAC which did not have jurisdiction. The Appeal was subsequently disallowed by the 2<sup>nd</sup> Respondent commission on 26<sup>th</sup> August 2020 on the ground of having looked at the board deliberations. However, the board deliberations did not exist as the 1<sup>st</sup> Respondent's Acting Director General confirmed in the letter dated 21<sup>st</sup> June 2024 there were no board deliberations.
  72. It is the Claimant's submissions that the 2<sup>nd</sup> Respondent's decision dated 26<sup>th</sup> August 2020 dismissing the claimant's appeal was wanting and based on deliberations which never existed.
  73. On the final issue, the Claimant submitted that her claim on the reliefs sought was never challenged by the Respondents either through their pleadings or through evidence tendered in court. However, she abandoned her prayer for reinstatement.
  74. The Claimant submitted that she joined the 1<sup>st</sup> Respondent's in the position of a Chief Industrial Training Officer under Grade NITA 11 which attracted a gross salary of Kshs. 175,000, however, the 1<sup>st</sup> Respondent irregularly retained her at Grade 8 and paid her a salary of Kshs. 154,596, thereby it underpaid salary by Kshs. 20,404 monthly for a period of 7 years.
  75. It is the Claimant's submission that the claim for compensation for loss of employment is made under the provisions of Section 49 of the [Employment Act](#) on the basis that the 1<sup>st</sup> Respondent unfairly and



unlawfully dismissed her employment whereas she had legitimate expectation to continue working and receive salary until retirement at 60 years.

76. On salary and allowance until retirement, the Claimant submitted that at the time of termination, she had legitimate expectation to work until retirement age of 60 years which expectation was cut short by the Respondent through unfair termination by summary dismissal.

### **1<sup>st</sup> Respondent's Submissions**

77. The Respondents submitted on three issues: whether the termination was fairly and procedurally done; whether the Claimant is entitled to the relief sought; and who bears the cost of the suit.
78. On the first issue, the 1<sup>st</sup> Respondent submitted it that followed the correct legal procedure for termination, ensuring compliance with both substantive and procedural fairness as required by the *Employment Act* and the Human Resource Policy and Procedure Manual.
79. The 1<sup>st</sup> Respondent submitted that the Claimant was issued warning letters for failing to adhere to the requirement of clocking in system and being disrespectful. She was given a specified period to address these allegations through her Centre Manager, failing which actions would be taken against her. The Claimant failed to address all the allegations against her and was warned to desist from violating employees' rules and regulations as outlined in the 1<sup>st</sup> Respondent's Human Resource Policy and Procedure Manual. Due to consideration given by the management she was pardoned and her interdiction was pardoned. She still continued to sustain her absence even after the interdiction was lifted.
80. The 1<sup>st</sup> Respondent submitted that the as a result of her conduct, the Manager HR & ADMIN sent a memo reference NITA/CON/0016/VOL.1 under the subject 'STATUS OF DISCIPLINARY CASE-TERESIA MUKORA-NITA 0016' dated 25<sup>th</sup> October 2015 to the Director General; and reported that the Claimant's actions constituted a breach of the Human Resource Policy & Procedures Manual of the Authority and recommended either dismissal or further disciplinary measures to be taken and requested the officer to show cause why she should not be summarily dismissed.
81. The 1<sup>st</sup> Respondent further submitted that the Claimant was issued a notice to show cause dated 10<sup>th</sup> November 2015 which gave her 21 days to show cause why she should not be summarily dismissed for desertion of duty. Subsequently, a disciplinary process was initiated by the Director General, by constituting appointing a disciplinary committee via an Internal Memo Ref No NITA/CON/0016/VOL.1/14, and the case was heard on 12<sup>th</sup> January 2016.
82. It is the 1<sup>st</sup> Respondent's submission that allegation that the disciplinary hearing had no quorum contrary Section 10.25 of the Human Resource Policy & Procedures Manual is baseless. The said section makes no reference to the quorum of the committee hence there is no reason to hold that the committee was improperly constituted. Additionally, the minutes of the disciplinary committee meeting indicate that three members out of the five appointed committee members were in attendance thus there was quorum.
83. The 1<sup>st</sup> Respondent submitted that the Claimant's letter of appointment dated 9<sup>th</sup> July 2013 shows she was appointed as the Chief Industrial Training Officer within the salary scale of NITA 8. Section 2.1.7 of the Human Resource Policy and Procedure Manual categorizes NITA 8 under the Middle Management Grades (8-7). Since the Claimant is not a Head of Department, her disciplinary case falls within the mandate of the Staff Disciplinary Committee; which consists of Heads of Departments and is chaired by an appointee of the Director General as per the provisions of the Human Resource Manual.



84. It is the 1<sup>st</sup> Respondent's submissions that it conducted a disciplinary hearing on 12<sup>th</sup> January 2016 and the Claimant was invited to put on defence. In her oral submissions, the Claimant confirmed that she deserted from duty from 28<sup>th</sup> July 2015 without leave or lawful cause. Additionally, the Claimant accepted deserting duty in her defence letter dated 19<sup>th</sup> November 2015.
85. Further, the 1<sup>st</sup> Respondent's Human Resource and Administration Department's monthly staff attendance report schedule and the MITC clocking-in register substantiate the months during which she was absent from duty. The Disciplinary committee submitted this report to the Director General and made a resolution to dismiss her from duty pursuant to Section 44 of the Employment Act and Section 10 (18) of the 1<sup>st</sup> Respondent's Human Resource and Procedures Manual [2015] on account of desertion of duty.
86. The 1<sup>st</sup> Respondent submitted that Section 44 of the Employment Act outlines that gross misconduct can justify the summary dismissal of an employee for lawful cause; this includes absence from work without leave or lawful cause. It relied on *Felistas Acheha Ikatwa v Charles Peter Otieno* [2018] KEELRC 2491 (KLR) where the court held: "The law is therefore well settled that an employer claiming that an employee has deserted duty must demonstrate efforts made towards getting the employee to resume duty. At the very least, the employer is expected to issue a notice to the deserting employee that termination of employment on the ground of desertion is being considered."
87. The 1<sup>st</sup> Respondent submitted that the Claimant appealed against the Disciplinary Committee's decision on 15<sup>th</sup> February 2016 and the Director General constituted an Appeals Committee which heard and determined the appeal 16<sup>th</sup> March 2016. The Appeals Committee upheld the earlier decision and communicated the same to the Claimant vide a letter dated 22<sup>nd</sup> April 2016. Subsequently, the Claimant complained against the decision to the Commission on Administrative Justice which requested the authority vide letter reference CAJ/M.NITA/020/78/16 to investigate; and ultimately the Commission upheld the decision to dismiss the complainant. The Claimant lodged another appeal to the 2<sup>nd</sup> Respondent on 24<sup>th</sup> January 2017; the 2<sup>nd</sup> Respondent considered the appeal on 26<sup>th</sup> August 2020 and communicated its decision vide a letter referenced PSC/PAP/MU/1/ (13) where it disallowed the Claimant's appeal as she did not raise any convincing grounds.
88. It is the 1<sup>st</sup> Respondent's submissions that the Claimant's termination was lawful, fair, and in compliance with the Employment Act and the applicable internal policies; and the decision to summarily dismiss the Claimant was based on valid and justifiable grounds of desertion of duty.
89. On the second issue, the 1<sup>st</sup> Respondent submitted that having established that the dismissal of the Claimant's employment was in accordance with Section 44 of the Employment Act, the claim for salary in lieu must fail. The Claimant was terminated for absconding duty; therefore, no notice is required.
90. It is the 1<sup>st</sup> Respondent's submissions that the Claimant is not eligible for Pension Contribution as her services are classified under past services. It relied on Section 5 of the Pension Act which states that: "Every officer shall have an absolute right to pension and gratuity. Although this right shall not apply in respect of compensation for past services, nor shall anything in this Act affect the right of the Government to dismiss any officer at any time and without compensation."
91. The 1<sup>st</sup> Respondent submitted that the Claimant's claim for underpayment fails by virtue of the limitation contemplated by the provision in Section 90 of the Employment Act regarding continuous injuries which need to be filed within 12 months of the last incident of injury. The Claimant avers that she was underpaid salary and allowance from 9<sup>th</sup> July 2013. She received her letter of dismissal on 1<sup>st</sup> February 2016 and filed this claim on 22<sup>nd</sup> January 2019 well beyond the 12 months' time limit for continuing injury under section 90 of the Employment Act.



92. The 1<sup>st</sup> Respondent further submitted that the Claimant confirmed that according to the conversion principles she was to retain the same salary as she was converted laterally in a grade and therefore within the same salary grade therefore she was to retain the current salary.
93. The 1<sup>st</sup> Respondent submitted that the termination of the Claimant was not only justified but also procedurally fair. The Respondent went to great lengths to give the Claimant opportunities to be heard and proffer her defence to the allegation of absconding, therefore, no damages are due.
94. The 1<sup>st</sup> Respondent submitted that the termination of the Claimant was in accordance with the Employment Act under summary dismissal, under absconding duty, therefore, she is neither entitled to baggage and luggage nor salary and allowances for 9 years until retirement as she was lawfully terminated.
95. On the final issue, the 1<sup>st</sup> Respondent submitted that the suit has no basis but is a mere fabrication intended to unjustly enrich the Claimant at the expense of the Respondent, it is only proper that the entirety of the suit be dismissed and costs awarded to the Respondent.

## **2<sup>nd</sup> Respondent's Submissions**

96. The 2<sup>nd</sup> Respondent submitted on two issues: whether the Claimant's appeal was lawfully and procedurally determined by the Commission; and whether the Claimant has established a case against the Commission.
97. The 2<sup>nd</sup> Respondent submitted that it received an appeal from the Claimant against her dismissal vide a letter dated 24<sup>th</sup> January 2017 and forwarded the same to SCAC vide a letter dated 31<sup>st</sup> January 2017 for consideration in accordance with the Commission's Delegation Instrument. SCAC subsequently forwarded documents relating to the Claimant's disciplinary case to the Commission vide a letter dated 26<sup>th</sup> April 2017; following their request for the same from the 1<sup>st</sup> Respondent's Director General. The Commission then reverted the Claimant's case to SCAC to consider and determine it in accordance with the delegation instrument as earlier advised.
98. The 2<sup>nd</sup> Respondent submitted that vide a letter dated 29<sup>th</sup> August 2019, it directed the 1<sup>st</sup> Respondent's Director General to table the case before its Board and subsequent submission of the comments and recommendations to the Commission. Subsequently, the 1<sup>st</sup> Respondent vide its letter dated 28<sup>th</sup> January 2020, forwarded the Board's comments and recommendation on the Claimant's appeal.
99. The 2<sup>nd</sup> Respondent submitted that it considered the Claimant's appeal together with the comments and recommendations of the National Industrial Training Authority and all other supporting documents and decided that the appeal be disallowed as she had not raised convincing grounds to warrant the appeal. The Commission's decision was communicated to the Director General, NITA and copied to the Claimant.
100. It is the 2<sup>nd</sup> Respondent's submissions that it was not convinced with the grounds submitted in support of the Claimant's appeal thereby disallowing the said appeal. It then communicated its decision to that effect vide a letter dated 26<sup>th</sup> August 2020 in which the Claimant was also informed of his right to apply for a review pursuant to Section 75 of the PSC Act.
101. It is the 2<sup>nd</sup> Respondent's submissions that the Claimant was lawfully taken through a disciplinary process and dismissed from the service. Despite being notified of her right to apply for review, she failed to enjoy that right and instead approached this Court.



102. The 2<sup>nd</sup> Respondent submitted that the exercise of disciplinary control in respect of the Claimant was lawfully undertaken by the 1<sup>st</sup> Respondent and the Commission in strict conformity with the dictates of *the Constitution*, Part XII of the PSC Act, 2017, Part IX of the PSC Regulations, the *Fair Administrative Action Act*, 2015 and the attendant Manuals. The Claimant has not demonstrated how these legal requirements were breached during the disciplinary processes that she was taken through by the 1<sup>st</sup> Respondent.
103. On the final issue, the 2<sup>nd</sup> Respondent submitted that it has demonstrated that after the Claimant was lawfully disciplined by her employer, the 1<sup>st</sup> Respondent; and she exercised her right of appeal to the Commission pursuant to Section 74 of the PSC Act. It is at that point that the jurisdiction of the Commission kicked in to determine the Claimant's appeal.
104. The 2<sup>nd</sup> Respondent submitted that appeal was lawfully determined by the Commission and its decision was duly communicated to the Claimant in writing. The Claimant was also notified of her right to apply for a review, which she never exercised.
105. The 2<sup>nd</sup> Respondent submitted that no cause of action has arisen against it in view of the Claimant's claim and the Claimant has not made a case against the Commission.
106. I have examined all the evidence and submissions of the parties herein. The claimant has averred that she was unfairly terminated by the 1<sup>st</sup> respondent. She also indicated that she was subjected to an unfair disciplinary process. The issues for this court's determination are as follows:-
  - (1) Whether the claimant was fairly and justly terminated.
  - (2) Whether the claimant is entitled to the remedies sought.

#### **Issue No 1**

107. In determining this issue, I refer to the letter dismissing the claimant from employment dated 1/2/2016 which stated that the reason for her dismissal was desertion of duty. Prior to this dismissal, the claimant was served with a show cause letter dated 14/7/2015 which indicated that on 2<sup>nd</sup> and 3<sup>rd</sup> July 2015, she absented herself from duty. There were other allegations in the said letter indicating she used objectionable and insulting language to a co-workers, walking out of a meeting called by the centre manager, failing to obey lawful orders, inciting staff and students against management and sabotaging the authorities policies. The claimant was asked to respond to the allegations and she did vide a letter dated 21/7/2015 denying the said allegations.
108. In response to the allegation of desertion of duty she indicated that on 2<sup>nd</sup> and 3<sup>rd</sup> July 2015 she stated that on this day she was within MITC compound which is her duty station and that the centre manager never contacted her to verify her absence.
109. After the response, the allegations were proved but she was pardoned and the interdiction she had been placed on was lifted on 10/11/2015. The claimant was again served with another show cause letter indicating that she had absented herself from duty with effect from 28<sup>th</sup> August 2015 to the date of writing the letter. She was asked to respond within 21 days. The claimant responded vide her letter of 19<sup>th</sup> November 2015 indicating as follows:
 

“..... up to today I have not received your reply of which I am eagerly waiting less I report back to Mombasa and students strike and I be held responsible. And this is the reason I have not reported back”.



110. On 5/1/2016 she was then invited for a disciplinary hearing to be held on 11/1/2016 from 10am at Mombasa Industrial Training Centre (MITC). The meeting was subsequently adjourned to 12/1/2015. The disciplinary committee meeting show that the meeting was held on 12/1/2016 at MITC and present were 3 members (inclusive of the chair) composed of Mr Stephen Ogenga- DIT chairman, Mr Ekana Kirundi and Julius Olayo. There were 2 apologies from Irine Ogamba – Manager KITC.
111. The claimant has submitted that though she attended the disciplinary hearing, there was no quorum as the centre manager and her accuser the DIT and Human Resource Manager walked out when she raised the issue of none availability of the other head of department as required in S.10.25 of the respondents HR policy and procedure manual 2015.
112. The claimant indicated that she was subjected to an inferior disciplinary committee comprising of members of management yet at her level as chief industrial training officer when was supposed to be disciplined by the board. She also avers that the meeting only had 2 members of the disciplinary committee who were her accusers instead of 10 heads of department.
113. I have looked at the respondents HR manual. Section 10.25 state a follows:” the staff disciplinary committee will be composed of Heads of department as members and shall be chaired by an appointee of the Director General. The Director General had vide his letter of 3/12/2015 composed the disciplinary committee composed of Stephen Ogenda- Director DIT (Chairman) and other 5 members.
114. It is noteworthy that E. M Kirindi was centre Mombasa who was the claimant’s accuser. He was however among members appointed to be a members of the disciplinary committee. During the sitting of 12/1/2016, other than this M. N. Kirundi, only 2 other members attended and 2 sent apologies. The objection by the claimant on lack of quorum was therefore a valid concern. The claimant could not have expected a fair determination against her in view of her accuser being a member of the disciplinary committee.
115. The law is clear under the *Fair Administrative Action Act* at section 7(2) that:
- “ the court or tribunal can review an administriave action if:
- (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions.
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
- SUBPARA (o)
- the administrative action or decision is taken or made in abuse of power”
116. In the case of the claimant, it was indeed unfair to subject her to a disciplinary process where the committee did not have quorum and even her accuser was a member of the panel. She was thereafter dismissed by the respondents vide the letter of 1/2/2016.
117. She appealed the dismissal and appeal committee sat to consider her appeal. The appeals committee held the meeting on 16/3/2016. The committee comprised of the Manager Levy Administration (Chairman) Chief Enterprise and Marketing, Ag Manager Finance and Senior Legal Officer. The committee dismissed her appeal. The claimant took up the matter again and reported to the Commissioner on Administrative of Justice (Ombudsman). The Ombudsman made an inquiry and



gave its recommendation. The claimant further appealed the dismissal to the PSC which also did not consider grounds of her appeal.

118. It is my finding that the claimant was denied an opportunity to present her case to the correct forum and also issues raised in her appeals were not considered. Section 45(2) of the *employment act* 2007 states as follows:

- (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 employees 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.

119. Given that the claimant was subjected to a flawed disciplinary process, I find the dismissal unfair and unjustified.

### **Issue No 2**

120. Having found the claimant's dismissal as unfair and unjustified, I find for her and award her the following remedies.

1. 1 month salary in lieu of notice = 154,596/-
2. Compensation for unlawful dismissal and based on the process which would not allow the claimant recover and gain another job at her age, I find 12 months' salary as adequate.= 154,596 x 12 =kshs 1,855,152/-
3. Unremitted pension contributions = kshs 29,845/-.  
Total = 2,039,593/-less statutory deductions
4. Issuance of a certificate of service
5. The 1<sup>st</sup> respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgement.

**Dated, Signed And Delivered Virtually at Nairobi this 19<sup>th</sup> of June, 2025.**

**HELLEN WASILWA**

**JUDGE**

