



**Moffat v Kenya Revenue Authority (Employment and Labour Relations Cause E089 of 2025) [2025] KEELRC 2290 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2290 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E089 OF 2025**

**BOM MANANI, J**

**JULY 31, 2025**

**BETWEEN**

**PETER MURIITHI MOFFAT ..... CLAIMANT**

**AND**

**KENYA REVENUE AUTHORITY ..... RESPONDENT**

**RULING**

**Background**

1. The Claimant was an employee of the Respondent until 8<sup>th</sup> October 2024 when his contract of service was terminated. He has now filed these proceedings to challenge the propriety of the decision to terminate his services.
2. Together with the Statement of Claim, the Claimant filed the application dated 11<sup>th</sup> February 2025 through which he seeks various interim reliefs including the following:-
  - a. That the court orders the Respondent to reinstate him back into employment pending the hearing and determination of his case.
  - b. That the court issues an order stopping the Respondent from advertising and or filling his position pending resolution of the dispute between them.
  - c. That the court issues direction on costs of the application.
3. The application is supported by the Claimant's affidavit dated 11<sup>th</sup> February 2025. He contends that the Respondent employed him to the position of Supervisor, Ethics and Integrity as from 3<sup>rd</sup> March 2014. He further avers that he held the position until his services were terminated on 8<sup>th</sup> October 2024.
4. The Claimant contends that the Respondent issued him with a letter alleging that one of his certificates was not genuine. However, he disputes this assertion.



5. The Claimant contends that he successfully attended a course which led to issuance of the impugned certificate. As such, he was astonished by the Respondent's assertions that the certificate was not genuine.
6. The Claimant avers that after the Respondent raised the matter, he visited the institution which issued him with the certificate to verify that it was authentic. He contends that the institution confirmed that the certificate was genuine and that the person who had issued the Respondent with the letter that cast aspersions on the instrument did so in error.
7. The Claimant avers that he brought this information to the attention of the Respondent through his response to the show cause letter and during the hearing of the disciplinary case against him. However, he contends that the Respondent refused to accept the information and went ahead to terminate his services.
8. The Claimant avers that the Respondent introduced and relied on new evidence to throw out his appeal. As such, he contends that the decision to terminate his services was unfair and a travesty of justice.
9. The Claimant prays that pending resolution of the case, the court orders the Respondent to reinstate him back to work since the reasons that were given to justify his release from employment are illegitimate. He contends that the certificate which the Respondent alleges to have been forged has since been confirmed to be genuine by the issuing institution. He further contends that the impugned certificate is in any event a peripheral documents that was not material in the decision to employ him. As such, it should not be used to justify the decision to throw him out of employment.
10. The Respondent has opposed the application through a replying affidavit dated 7<sup>th</sup> March 2025. It confirms that the Claimant was its employee but was summarily dismissed from service on 8<sup>th</sup> October 2024.
11. The Respondent avers that it was asked by the Public Service Commission to conduct an audit of the academic qualifications of its employees and dismiss from employment any employee whose certificates would be found to be questionable. It contends that it is pursuant to this directive that it caused to be verified all academic certificates for its employees.
12. The Respondent avers that when it wrote to the institution from which the Claimant had allegedly obtained the impugned certificate, the said institution indicated that the Claimant had not been their student. As such, the certificate he had presented to the Respondent purporting to be genuine was not.
13. The Respondent avers that this development informed the decision to take disciplinary action against the Claimant. As such, it issued him with a letter to show cause why his services should not be terminated for having presented to it falsified documents.
14. The Respondent avers that after it issued the Claimant with the show cause letter, it received two letters from the institution which had allegedly issued him with the impugned certificate now confirming that he had indeed been their student and had been issued with the certificate. The Respondent contends that in view of the contradictory positions that the said institution had taken on the matter, it (the Respondent) wrote a letter asking for further details on the subject. The Respondent avers that in response, the institution wrote to say that although the Claimant was its student, he did not meet the threshold for issuance of the impugned certificate. As such, it (the issuing institution) considered the certificate as a forgery.



15. The Respondent contends that on the basis of the foregoing, it found that Claimant culpable of the offense of dishonesty and summarily terminated his services. It further contends that although the Claimant challenged the decision on appeal, the appeal was dismissed for lack of merit.
16. The Respondent contends that it had valid reasons to terminate the Claimant's services. It further avers that it followed due process in releasing him from employment. As such, it prays that both the suit and the application be dismissed for lack of merit.

### **Analysis**

17. As is discernible from the affidavits filed by the parties, the matters which resulted in the termination of the Claimant's contract are heavily contested. As such, the appropriateness of the Respondent's decision to sever the employment relation between them can only be determined after full trial. The court cannot take a position on the subject at this preliminary stage without the benefit of evidence which has been tested through cross examination.
18. The relief of reinstatement seldom issues at the preliminary stage of a trial. As was correctly pointed out by Nzioki Wa Makau J in *Ngige v Samsung Electronics EA Limited* [2023] KEELRC 1985 (KLR), such remedy can only issue in exceptional circumstances. Otherwise, it is generally advisable that the court only considers whether or not to issue it after full trial.
19. In the case of *Kenya Tea Growers Association & another v Kenya Plantation and Agricultural Workers Union* [2018] KECA 32 (KLR), the Court of Appeal observed that in situations where the validity of the decision to terminate an employee's contract of service is heavily contested, it is generally inadvisable to issue an order for reinstatement of the employee back into employment at the interlocutory stage of the case. In the Court of Appeal's view, such orders should ordinarily await full trial of the case.
20. I agree with the sentiments expressed above. As indicated earlier, the basis for the decision to terminate the Claimant's contract of service in the instant suit is heavily contested making the matter unsuitable for the grant of interim orders for reinstatement. Besides, the Claimant has not demonstrated any exceptional circumstances that warrant the grant of orders for reinstatement pending trial of the case. Consequently, the prayer for reinstatement is declined.
21. The Claimant has also prayed for an order to restrain the Respondent from filling his position pending trial of the case. The court notes that the decision to terminate the Claimant's services was rendered on 8<sup>th</sup> October 2024. The Claimant filed the instant application on 12<sup>th</sup> February 2025, approximately four (4) months after the decision to terminate his services was taken.
22. Although the Claimant seeks for an order to bar the Respondent from filling the impugned position, he has not placed before the court any material on the basis of which the court can determine that the position was still vacant at the time he moved to court and thereafter. In the absence of this preliminary information which, in the court's view, was critical to the application, it (the court) is unable to issue the orders sought.

### **Determination**

23. The upshot is that the court finds that:-
  - a. The application dated 11<sup>th</sup> February 2025 is unmerited and is declined.
  - b. Costs of the application will be in the cause.



**DATED, SIGNED AND DELIVERED ON THE 31<sup>ST</sup> JULY, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the [\*ELRC Procedure Rules\*](#) which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M. MANANI**

