



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nzambu v Teachers Service Commission (Employment and Labour Relations Cause 520 of 2019) [2025] KEELRC 2408 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2408 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 520 OF 2019**

**K OCHARO, J  
JULY 31, 2025**

**BETWEEN**

**BEATRIS MUTWA NZAMBU ..... CLAIMANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Beautris Mutwa Nzambu (the Claimant) was employed by the Teachers Service Commission (the Respondent) through the Letter of Appointment dated 4th July 2006. The Respondent, however, terminated the Claimant's employment via a letter dated 21st March 2019, citing an alleged breach of the Human Resource Policies Manual and procedures for TSC Secretariat staff. Claiming that her termination was unlawful and unfair, the Claimant initiated this suit, seeking;
  - a. A declaration that the disciplinary action and the decision for dismissal of the Claimant by the Respondent were in breach of the Claimant's labour rights and natural justice and therefore unlawful and illegal.
  - b. An order for reinstatement of the Claimant to her employment with the Respondent.
  - c. An order for compensation for breach of her Constitutional rights.
  - d. An order for general damages.
  - e. Interest on (c) above at court rates.
  - f. Costs of this suit and interest thereon.
  - g. Any other relief that this Honourable Court shall deem fit and just to grant in the circumstances.



2. The Respondent resisted the Claimant's claim by filing a Reply to the Statement of Claim, contending that the termination of her employment was lawful and procedurally fair. She is not entitled to the reliefs sought.

### **Claimant's case**

3. The Claimant stated that she joined the Respondent's workforce under a letter of appointment dated 4th July 2006, as a Copy Typist II, TSC Scale 3. It was a term of her employment contract that her confirmation of employment was contingent on the successful completion of a six-month probationary period. She was confirmed in employment through a letter dated 6th June 2007.
4. On 21st January 2015, the Respondent was promoted to the position of Personal Secretary I on permanent and pensionable terms, with her projected retirement date set for 14th January 2044.
5. On 24th July 2018, the Respondent issued her a show cause letter requesting her to explain why disciplinary action could not be taken against her over allegations that she had obtained a loan using forged clearance documents. She responded in detail to the show-cause letter in a letter dated 31st July 2018. She denied the allegations of gross misconduct.
6. Subsequently, through a letter dated August 14, 2018, the Respondent invited her to a disciplinary hearing, which she attended on August 17, 2018.
7. To date, the Respondent has not communicated its decision regarding the disciplinary case against the Claimant.
8. By a letter dated 8<sup>th</sup> October 2018, the Respondent interdicted her, accusing her of two counts;
  - i. On 21<sup>st</sup> September 2017, she colluded with TSC/900130-Sheilla Mwikali Kaloki to irregularly and procedurally stop payments towards her existing Co-operative Bank loan to create a pay-slip ability to enable her to acquire a loan with Kenya Commercial Bank, and
  - ii. On 28.03.17, 29.3.17 and 11.7.17, she colluded with TSC/ 900465-Asher Oduol Onyango to irregularly and unprocedurally stop the existing Cooperative Bank loan to create a pay-slip ability to enable her to acquire a loan with Kenya Commercial Bank.As a result, she was unable to service the loans as agreed, thus causing her pecuniary embarrassment.
9. The Respondent expressed that the actions were in breach of Clause 112-4(I) of the Human Resource Policies Manual and Procedures for TSC Secretariat Staff, as well as Part III 9(a) of the TSC Code of Conduct and Ethics. As a result, she was accused of failing to service the loans as agreed, allegedly causing pecuniary embarrassment.
10. By her letter dated 6<sup>th</sup> November 2018, she denied all the allegations, which she said were erroneous as she didn't collude with the staff members as was alleged.
11. The interdiction was pending the hearing and determination of her disciplinary case. She was instructed to surrender all items belonging to the Respondent to her supervisor before commencing her interdiction, which she complied with.
12. Subsequently, she received a letter dated 23rd January 2019, inviting her to attend a disciplinary hearing scheduled for 21st February 2019.
13. She stated that on 21 February 2019, she appeared before the Respondent's Disciplinary Committee. During the hearing, the allegations against her were read out without any details regarding the complainant or the specifics of how she allegedly colluded to stop her salary deductions. She was not



allowed to challenge any evidence against her, as none was presented. Instead, she was merely asked to explain why she had allegedly colluded to stop loan deductions from her salary, despite the absence of any evidence or witnesses to support the allegations. In her view, the Committee had a predetermined stance on her culpability.

14. Through a letter dated 21st March 2019, the Respondent notified her of the decision to terminate her employment contract. The termination was based on allegations of breaching Clause 112-4(I) of the Human Resource Policies Manual and Procedures for TSC Secretariat Staff and Part III 9(a) of the TSC Code of Conduct and Ethics, as per the charges against her.
15. Cross-examined by counsel for the respondent, the claimant testified that the show cause letter detailed the accusations against her. The allegations of forging documents to secure a loan were unfounded.
16. She admitted that in her response to the show cause letter, she owned up to the misconduct, apologised, and undertook to settle the Co-operative Bank loan.
17. In her response to the interdiction letter, she apologised for her infractions and sought pardon.

### **Respondent's case**

18. The Respondent called one witness, Benjamin Githinji, to testify on its behalf. It was their case that, at all material times, the Claimant was employed by them, having been appointed as a Personal Secretary.
19. The Respondent further asserted that the Claimant's contract of employment was subject to various legal frameworks, including the *Teachers Service Commission Act*, the *Employment Act*, the Human Resource Policies & Procedures Manual for Secretariat Staff, the Respondent's Manual of Conduct and Ethics, the Public Officers Ethics Act, and other policies issued by the Respondent from time to time.
20. On or around 7th October 2017, they received a complaint from the Co-operative Bank of Kenya, alleging that certain employees of the Commission, including the Claimant, who were serving as Secretariat officers, had ceased servicing their bank loans despite not having cleared them.
21. Upon receiving the complaint, the Respondent conducted investigations. It was found that the Claimant, in collusion with Sheila Nzioka and Asher Oduol Onyango, both based at the Integrated Payroll and Personnel Database (IPPD) Division, accessed the payroll system and halted loan deductions to Co-operative Bank for both the Claimant and Agnes Kaskai without any written instructions from the bank. Further investigations revealed that the Claimant had then used her payslip to secure additional loans from another financial institution.
22. Following the investigations, the Respondent issued a Show Cause Letter to the Claimant outlining the allegations against her, to which she responded. The Human Resource Management Discipline Committee convened and determined that the Claimant had a case to answer. Consequently, she was interdicted and issued with an interdiction letter, which she responded to, denying the allegations.
23. The Claimant was then informed that a disciplinary hearing would be conducted and was invited to appear before the panel. The Respondent asserted that they diligently considered the Claimant's oral statement and determined that she was guilty of breaching the Manual. Accordingly, she was dismissed and duly informed of the dismissal.
24. The Respondent asserted that, in handling the Claimant's disciplinary case, they acted impartially, independently, and with the utmost professionalism. The resulting decision was fair, just, and appropriate, based on the merits of the case, the evidence presented, and the nature of the offence committed by the Claimant under the provisions of the Manual.



25. Cross-examined by counsel for the claimant, the witness stated that he was not involved in the investigations concerning the matter. However, he was involved in preparing the audit report. Furthermore, he appeared before the disciplinary committee as an ICT expert.
26. Before a decision is made to have the accused employee taken through a disciplinary hearing, a first Committee sits to interrogate the alleged misconduct. His name does not appear in the minutes of this Committee as he didn't appear before them.
27. When he appeared before the main Disciplinary Committee, his testimony was that he checked the system and confirmed that there was some interference. At the hearing, the Claimant didn't cross-examine him.
28. One's ability to get a loan could be assessed by the system automatically. There was evidence that she attempted to stop a running loan on the system. She eventually obtained a loan from Kenya Commercial Bank, as a result of the creation of a pay-slip ability.
29. In September 2017, there wasn't any deduction of the Claimant's salary for her facility with Co-operative Bank. The letter from the Bank confirmed that the facility had been fully offset.
30. Deduction for repayment of the Kenya Commercial Bank loan, commenced in September 2017.
31. The disciplinary process was due to the fact that she stopped the loans. The charge against her was that she attempted to stop them from running.
32. The staff members who were mentioned in the charges were not called as witnesses. They didn't make any statements confirming that they were approached by the Claimant, as alleged.

### **Analysis and determination**

33. Submissions were filed by the parties per the directions of this Court, and I have duly considered them.
34. I have carefully considered the pleadings and evidence by the parties, and the respective submissions by their Counsel, and the following issues emerge for determination
  - i. Whether the termination of the Claimant was procedurally and substantively fair.
  - ii. Whether the Claimant is entitled to the reliefs sought.
  - iii. Who should bear the Costs of the suit?

### **Issue 1**

35. In the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, the Court held that, "for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness."
36. In the case of *Kenya Plantation and Agricultural Workers Union v Eastern Produce (K) Limited* (Employment and Labour Relations Cause 22 of 2019) [2022] KEELRC 1302 (KLR) (21 July 2022) (Judgment) the Court relied on the case of *Anthony Mkala Chitavi v Malindi Water and Sewerage Company limited* [2013] eKLR where the Court held that;

"The ingredients of procedural fairness, as I understand it within the Kenyan situation, are that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee. Secondly, it would follow naturally that if an employee has a right



to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

37. Section 41 of the *Employment Act* sets out a procedure that any employer considering terminating an employee’s contract or dismissing them summarily must follow. Undoubtedly, this procedure is compulsory. In disputes over termination or summary dismissal, the burden is on the employer to prove that they followed the principles of procedural fairness when reaching their decision. It is important to note that the process includes three key elements, and the absence of any one of these would automatically make the termination or summary dismissal unfair.
38. Via the letters dated 17<sup>th</sup> August 2017 and 17<sup>th</sup> October 2017, KCB Bank and Co-operative Bank, respectively, complain about fraud regarding the Claimant’s loans. The Respondent subsequently conducted investigations regarding the accusations.
39. Undeniably, via the letter dated 24<sup>th</sup> July 2018, the Claimant was asked to show cause why disciplinary action should not be taken against her for gross misconduct. The letter had the accusations against her in detail, and an indication that the Respondent intended to take disciplinary action against her on those grounds.
40. The Claimant was then invited to a disciplinary hearing scheduled for 17<sup>th</sup> August 2018. The Respondent presented as evidence the Minutes of the HRM Disciplinary Committee of 4<sup>th</sup> September 2018. The minutes, which the Claimant did not challenge at all, reveal that the meeting scheduled for 17<sup>th</sup> August 2017 had been deferred to 4<sup>th</sup> September 2017 to allow the Commission to investigate one, Anne Kipos, who had been mentioned during the proceedings, and to help them understand her role in the “scheme” so the Committee could reach an objective decision. The minutes show that the Claimant was present.
41. It is therefore, my view, that the Claimant’s assertion that she was not at any time informed of the outcome of the meeting of 17<sup>th</sup> August 2017, is destitute of candour.
42. Following the two meetings, a decision was made to have the Claimant interdicted, and through its letter dated 8<sup>th</sup> October 2018, she was informed of the decision. The letter read;

“It has been alleged that you have breached Clause 112-4(i) of the Human Resource Policies Manual and Procedures for TSC Secretariat staff and Part III 9(a) of the TSC Code of Conduct and Ethics in that:

- (i) On 21.9.17. you colluded with TSC/900130- Sheila Mwikali Kaloki to irregularly and un-procedurally stop payments toward your existing Co-operative Bank loan so as to create pay-slip ability to enable you acquire a loan with Kenya Commercial Bank, and
- (ii) On 25.3.17, 9.3.17 and 11.7.17, you colluded with TSC/900465- Asher Oduol Onyango to irregularly and un-procedurally stop existing Co-operative Bank loan so as to create pay-slip ability to enable you acquire a loan with Kenya Commercial Bank.

As a result, you could not service the loans as agreed thus causing Pecuniary embarrassment



Before the Commission proceeds to hear and determine your case, you are invited to make a statement to the Commission in writing, which should be received within 21 days from the date of this letter. You should, however, note that failure to defend yourself will not prevent the Commission from hearing and determining your case.

Before your case is determined you will be given an opportunity of being heard in person.”

43. The Claimant was then invited to a disciplinary hearing on 21<sup>st</sup> February 2019, and a month later informed of the Respondent’s decision to terminate via the letter dated 21<sup>st</sup> March 2019.
44. I have carefully considered the Minutes of the disciplinary hearing of 21<sup>st</sup> February 2019, and conclude that they do not reveal any reason that can be a basis for a conclusion that the Claimant wasn’t allowed an adequate opportunity to defend herself.
45. Considering the documents presented by the Respondent in evidence to prove that the termination was procedurally fair—the show cause letter to the minutes of 21<sup>st</sup> February 2019—one observes a process that incorporated all the elements mentioned above [the notification, hearing, and consideration], contrary to the submissions by counsel for the Claimant.
46. I note the Claimant’s Counsel’s submissions that the Respondent availed a witness who didn’t participate in the disciplinary hearing, and as such, one who could not sufficiently testify on all the happenings at the hearing. From the evidence on record, the witness was an expert witness before the Committee. It can be true, therefore, that he was not a witness who could testify on all the events. He was allowed, without opposition from the Claimant, to tender documents, documents which I have held were on a balance of probabilities indicative of procedural fairness. Counsel’s submissions lack merit, therefore.
47. In sum, the dismissal of the Claimant from employment was procedurally fair.
48. Section 43 of the *Employment Act* places the burden of proof on the employer in a dispute regarding the termination of an employee’s employment, requiring them to demonstrate the reason for the termination. Section 45 further obliges the employer to prove that the reason was fair and valid.
49. By their show cause letter dated 31<sup>st</sup> July 2018, the Respondent outlined accusations against the Claimant, upon which they proposed to take disciplinary action. In her response letter, the Claimant wrote;

“..... I hereby do admit that I had applied for a loan with KCB, which was supposed to clear a loan in Co-operative Bank, and instead went to my personal account, from which I used the money to clear the accrued bill of my sick father.

I sincerely apologise for my gross misconduct and promise it will never happen again, and I plead not to be punished because of my misconduct. I made a step clearing all accrued interests with Co-operative bank and am up to date in terms of paying their loan, am looking forward to clear the whole loan.

Attached find documents from coop bank showing our agreement.....”



50. In response to the interdiction letter, the Claimant stated in her letter dated 6<sup>th</sup> November 2018, inter alia;

“I sincerely request to be pardoned for my misconduct and be given another chance and promise that it will never happen again, since I need the job to take care of my needs and my sick father and as well serve the teachers...”

51. In my view, the contents constitute an explicit admission of the accusations. The Claimant did not assert or tender any evidence to demonstrate that the statements were made involuntarily. She cannot deny them. This, coupled with the unchallenged evidence by the Respondent’s witness that the system was manipulated to enable pay-slip capability, the Claimant’s admission that the loan from KCB was not utilised [and I infer deliberately so] towards settling the Co-operative Bank loan, and the fact that she did not show that before taking the KCB loan, she had the pay-slip capability, lead me to conclude that the Respondent had a valid reason to dismiss the Claimant, and that such reasons were fair.

52. The dismissal was substantively justified.

## **Issue II**

53. This Court notes that the Claimant’s assertion that the Respondent was in breach of her labour rights and the principles of natural justice was solely based on the argument that the process leading to her summary dismissal did not conform to the principles of procedural fairness. Having found, as I have hereinabove, that the dismissal was procedurally fair, I am not persuaded to grant the declaration sought, nor the associated relief of general damages for the alleged violation.

54. The other reliefs sought were on the premise that the dismissal was unfair. This Court has found that the dismissal was procedurally and substantively fair. The remedies cannot be availed to her.

55. In the upshot, the Claimant’s claim is hereby dismissed with costs.

**READ, SIGNED, AND DELIVERED THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**OCHARO KEBIRA**

**JUDGE**

