



Tutana v County Government of Isiolo & another (Employment and Labour Relations Cause E037 of 2024) [2025] KEELRC 2258 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2258 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E037 OF 2024**

**ON MAKAU, J
JULY 30, 2025**

BETWEEN

SALAD TUTANA CLAIMANT

AND

COUNTY GOVERNMENT OF ISIOLO 1ST RESPONDENT

GOVERNOR OF ISIOLO COUNTY 2ND RESPONDENT

JUDGMENT

Introduction

1. The Claimant herein was appointed the County Chief Officer in department of Agriculture and Irrigation, pursuant to section 45 of the County Government Act, for a two-year term on 15th March 2023. On 9th February 2024, he was reassigned to the Department of Vocational and Technical Training (DVTT) where he served until his dismissal on 27th August 2024. He deemed the dismissal to be unlawful, illegal and inhuman for being without a valid reason and for being done without prior notice or any hearing. Therefore, the claimant filed this suit seeking the following reliefs:
 - a. A declaration that the termination of the Claimant’s employment was unfair, illegal and unlawful.
 - b. A declaration that the Claimant’s right to fair labour practices has been breached.
 - c. A declaration that the Claimant’s right to fair administrative action has been breached.
 - d. A declaration that the claimant’s right to a fair hearing has been breached.
 - e. Payment of amount totalling to Kshs. 7,938,240/=
 - f. Costs of the suit



- g. Any other order that the Honourable Court may deem fit to grant in the circumstances.
2. The Respondents filed a Response admitting that the claimant was indeed employed as the Chief Officer as alleged and served diligently until February 2024 when he started absconding duty without leave or justification. It further averred that the reassignment of duty to DVTT was lawfully done, but the claimant absconded duty prompting various warnings and he was then dismissed.
 3. The respondent averred that before the dismissal, the claimant was served with a show cause letter and was also invited to a disciplinary hearing. Accordingly, the respondent contended that the dismissal of the claimant met both substantive and procedural fairness set out in the *Employment Act*. It clarified that the reason for the dismissal was chronic absenteeism and not because the claimant was a person living with disability. Consequently, the respondent denied that it violated constitutional rights of the claimant as alleged.
 4. The respondent admitted the jurisdiction of the court but averred that the Claim is barred by section 77 of the *County Governments Act* that provides for appeals of decisions of County Public Service Board (CPSB) to the Public Service Commission (PSC).

Evidence

5. The Claimant testified as CW1 by adopting his written statement dated 2nd September 2024 as his evidence in chief and produced three documents as his exhibits. In brief, he reiterated that he was appointed on 15th March 2023 as Chief Officer Agriculture and then on 9th February 2024, he was re-assigned as Chief Officer DVTT. On 19th July 2024, he received a letter from the County Secretary and Head of County Public Service accusing him of absence from work, which allegation was baseless. Subsequently, he received another letter on 27th August 2024 from the Governor, terminating his employment.
6. He contended that he had been attending work and delivering well for his department and at no time did he receive any warning letter or show cause letter from his immediate supervisor as required under the HR Policy and he was also not accorded disciplinary hearing. Therefore, he averred that the termination of his employment was unfair and his re-assignment as Chief Officer DVTT was illegal.
7. On cross examination, he stated that before his transfer to DVTT, he had no issue with either the Governor or the CPSB. He added that he was appointed by the CPSB and the Governor had nothing to do with it. He stated that he neither wrote to the Governor nor the CPSB seeking clarification on his termination.
8. He stated that the County Secretary had no mandate to write to him directly as his immediate supervisor was CEM Education. He admitted that he also never wrote any demand letter before filing the suit. He stated that his salary was Kshs. 300,000/= and it kept on increasing. He stated that the appointment letter stated Kshs. 243,000/= and that he had not filed any payslip.
9. He stated that after the letter of 27/8/2024, he called the secretary of the CPSB and the board was not aware of his dismissal. He stated that the dismissal was from the Governor and the County Secretary. He admitted that he never wrote to the CPSB, and he was not forced out of office after the termination. He also never appealed to the PSC because his dismissal was not decided by the CPSB.
10. Dade Boru, County Secretary and Head of Public Service, testified as RW1 by adopting his written statement as his evidence in chief and producing the documents as exhibits. In brief, he stated that the Governor, Vide Executive Order number 2 of 2024, reshuffled Chief Officers in order to ensure efficient service delivery to the people of Isiolo County hence re-assigning the claimant to serve as



the Chief Officer DVTT. However, after the re-assignment, the claimant started absconding duties without any leave or lawful cause.

11. RW1 further stated that as a result for the claimant's conduct, he was given verbal warning by his supervisors on various dates in January 2024. When the claimant persisted in his absence from work, he was issued with a warning letter dated 21st February 2024 and a show cause letter dated 12th March 2024 inviting him to explain why he should not be summarily dismissed. He contended that the claimant declined to respond to the show cause letter and by a letter dated 12th March 2024, RW1 reported to the CPSB the misconduct by the claimant and his failure to respond to the show cause letter.
12. RW1 further stated that by a Hearing Notice dated 3rd June 2024, the claimant was invited to attend disciplinary hearing on 12th June 2024. Again, the claimant failed to attend the hearing and the Disciplinary Committee recommended for his dismissal vide a letter dated 3rd July 2024. Upon receipt of the recommendation letter from the Disciplinary Committee, RW1 forwarded the same to the Governor who issued a termination letter dated 27th July 2024 to the claimant.
13. RW1 contended that the termination was procedurally right as the Governor exercised the power conferred upon him by section 31 of the County Government Act. Therefore, he averred that the claimant is not entitled to the reliefs sought as the termination was done for a valid reason and the claimant was accorded an opportunity to be heard before the termination.
14. On cross-examination, he stated the letters he wrote to the claimant were served to his office at the DVTT and have a receiving stamp but no signature. He added that it was presumed that the letters having been served upon the department he received them. He confirmed that the letter he wrote to the CPSB dated 12/5/2024 was on a Sunday and not a working day.
15. He further confirmed that his letter dated 3/6/2024 summoning the claimant to a hearing indicated names of the Disciplinary Committee members who were not members of the CPSB. He confirmed that the CPSB was fully constituted and even listed the names of the members. He admitted that under section 59 of the County Government Act only the CPSB has the role of conducting disciplinary hearing, but averred that the CPSB had allowed the said persons to hear the matter. He admitted that he did not have any letters authorizing the said persons to conduct the hearing for the claimant on behalf of the CPSB. He confirmed also not having the minutes of the Disciplinary Committee.
16. Finally, he admitted that the claimant's immediate supervisor was the Executive Committee Member (ECM) Education and contended that she had verbally reported to him about the claimant's absence from work. However, he admitted that he did not know whether the same was true.

Submissions

17. The Claimant submitted on the issues whether the Respondents have violated his rights, and whether his is entitled to the compensation sought.
18. On the first issue, it was submitted that the Respondents did not have a genuine reason for the dismissal and they never followed fair procedure in terminating the Claimant. Consequently, it was submitted that there was no substantive as well as procedural fairness in the termination as required under section 41 and 43 of the *Employment Act*. It was submitted that the alleged misconduct was not proved since the claimant was diligently attending work and performing his duties in his assigned docket.
19. As regards the procedure followed, it was submitted that the Claimant never received any warning letters adding, show cause letter and the letter inviting him to hearing. It was observed that the stamps on the said letters were not the genuine as they were not the same as the ones during the claimant's



- tenure. It was submitted that the 12th day of May 2024 when the show cause letter was allegedly served, was a Sunday and therefore not an official working day, which was deemed as deceptive and malicious.
20. As regards the disciplinary hearing, it was submitted that the claimant is a stranger to the same since he was never served nor received any hearing notice. Besides, the hearing notice dated 3rd June 2024 was never served upon him as it does not bear his signature acknowledging receipt. Consequently, it was submitted that the procedure followed to terminate the claimant's employment was unfair and biased against him.
 21. On the second issue, it was submitted that the Respondents ought to fairly compensate the Claimant for the violation committed against him as prayed. For the foregoing, the court was urged to find in favour of the claimant and grant the prayers in the Claim.
 22. The Respondent, on the other hand, submitted on the issues whether the Court has the jurisdiction to hear the claim, whether the Respondents have been properly sued, whether the Claimant was unlawfully terminated and whether he is entitled to the reliefs sought.
 23. On the first issue, it was submitted that the Court lacks jurisdiction by dint of section 77 of the CGA and section 87 of the PSC Act and as the Claimant has not exhausted all the statutory remedies. As such, the court was urged to strike out the suit.
 24. On the second issue, it was submitted that only the CPSB under section 45(2) of the County Government Act, can terminate a Chief Officer like the Claimant and therefore, it should have been the one sued by the Claimant and not the Respondents herein. It was therefore contended that the Respondents are improperly sued and thus the suit against them should be dismissed.
 25. On the third issue, it was submitted that in the event that this Court finds that the Respondents are properly sued, then it should find that the Claimant was terminated lawfully and procedurally. It was further submitted that there was a valid reason as the Claimant had failed, refused and/or neglected his duties and engaged in chronic absenteeism after reassignment to DVTT. In support of the argument, reliance was placed on sections 44(3) & (4)(c) of the *Employment Act*.
 26. It was further submitted that the termination was done in accordance with fair procedure as the Claimant was notified of the charges against him vide the show cause and then he was invited to a hearing. However, he declined to respond to the show cause letter and eventually failed to attend the disciplinary hearing and persisted in absconding his duties. It was again submitted that the disciplinary committee found the Claimant guilty and recommended for termination of his employment. Therefore, the court was urged to dismiss the suit with costs.
 27. On the fourth issue, it was submitted that if this Court finds that the termination was unfair, the Claimant should only be entitled to salary in lieu of notice of Kshs. 244,933/= and salary for the remainder of the contract period of Kshs. 1,481,598/= totalling to Kshs. 1,728,531.

Issues for determination analysis

28. Having carefully considered the pleading, evidence and submissions, there is no dispute that the claimant was employed as a Chief Officer by the Isiolo County Government under a two years contract from 15th March 2023. It is also a fact that the claimant was dismissed by the 2nd respondent vide the letter dated 25th July 2024. The issues for determination are: -
 - a. whether this Court lacks the jurisdiction to hear the matter.
 - b. whether the Respondents are properly sued in this case.



- c. Whether the termination of the claimant's contract of service was unfair and unlawful.
- d. whether the reliefs sought are merited.

Jurisdiction

29. The Respondents admitted in their defence that this Court has jurisdiction but averred that the suit was filed prematurely before exhausting the appeal mechanism under section 77 of the County Government Act and section 87 of the PSC Act. However, they did not file submissions to prosecute their preliminary objection within the time given by the court and as such it was dismissed by this Court on 13th January 2025.
30. The respondents were satisfied with the decision and submitted themselves to the jurisdiction of the court for trial until conclusion. It is trite law that the issue of jurisdiction has to be brought up at the earliest opportunity as enunciated in *The Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where the Court of Appeal held as follows;
- “I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
31. I further agree with the Court in *Mohammed Jelle Omar & another v Ali Salah & another* [2021] eKLR when it held that:
- “23. The issue of jurisdiction now raised after the Court heard and determined the matter inter-partes by the Respondents that the court did not have jurisdiction to issue after the said orders is clearly an afterthought.”
32. It is pertinent that the said section 77 of the County Government Act does not oust this Court's jurisdiction but merely serve the purpose of providing an alternative forum for resolving disputes. As already observed, the Respondents admitted in paragraph 17 of their Response that this Court has jurisdiction
33. The court appreciates that section 87 (2) of the PSC Act is couched in mandatory terms and therefore bars counts from rendering decisions before the PSC reviews the decision. Section 87 (2) provides that:
- “(2) A person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this Part has been exhausted.”
34. However, for the court to give way to the alternative procedure the decision to terminate must be emanating from the CPSB and not the County Governor who has no legal mandate to solely terminate employment contract of a Chief officer or any other employee in the county public service for that



matter. I gather support from the Court of Appeal decision in *Kisumu County Public Service Board & others v Samuel Okuro & 7 others* (2018) eKLR where it held that: -

“We have come to the conclusion that the Governor initiated the removal of the respondents without following the appropriate mechanism. The respondents being County Public Officers, the Governor could not terminate their services without involving the County Board and the County Assembly. In sending the respondents on compulsory leave and terminating the respondent’s contract, the Governor usurped the role of the County Board. This denied the respondent their rights under Section 77 of the County Government Act that allows any County Public Officer that is dissatisfied with the decision of the County Board in a disciplinary process to appeal to the Public Service Commission. Further, the respondents’ Constitutional fundamental rights were violated.”

35. In the instant case, RW1 did not produce any letter from the CPSB authorising strangers to conduct disciplinary hearing for the claimant. He also did not produce any minutes of the disciplinary committee for the claimant’s disciplinary hearing. Finally, he never produced any letter from the CPSB ratifying and affirming the decision of the Disciplinary Committee and requesting for implementation of the decision, as alleged by the RW1 in his letter to the Governor dated 25th July 2024.

36. Section 59 of the County Government Act provides that the functions and powers of the CPSB as follows:

- “(1) 3The functions of the County Public Service Board shall be, on behalf of the county government, to—
- (a) establish and abolish offices in the county public service;
 - (b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
 - (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part.”

37. The termination letter dated 27/8/2024, clearly indicates that the termination process did not involve the CPSB save that the termination letter was copied to it. Consequently, it is apparent that the decision was solely made by the office of the Governor with the advice of the County Secretary and as such not falling outside the appeal process before the PSC which only contemplates a decision of the CPSB. Even if another committee lawfully sat to determine the guilt of the claimant, at least, the final decision has to come from the CPSB in order for the appellate jurisdiction of the PSC to be invoked.

Improper respondents

38. In view of the foregoing conclusion that the respondents herein were the ones involved in the termination of the claimant’s employment, I hold that they are responsible for the termination and are therefore properly sued.

Unfair and unlawful termination



39. Section 45(1) of the *Employment Act* bars employer from terminating the employment of his employee unfairly. Sub-section (2) then provides that:

- “(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 employee’s 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.”

40. It is clear from the above provision that, termination is unfair unless the employer demonstrates that there was substantive and procedural fairness. In *Pius Machafu Isindu vs. Lavington Security Guards Limited* [2017] eKLR the Court of Appeal held, thus:

“There can be no doubt that the Act which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination / dismissal (Section 43); prove reasons are valid and fair (Section 45) ... among other provisions. A mandatory and elaborate process is then set up under Section 41 requiring notification and hearing before termination.”

41. Further the essential requirements for procedural fairness were laid down in *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR as follows:

“Four elements must thus be discernible for the procedure to pass muster:

- (i) an explanation of the grounds of termination in a language understood by the employee;
- (ii) the reason for which the employer is considering termination;
- (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”

42. As regards the reason for the termination, the RW1 stated under oath that he was told by the ECM Education that the claimant had absented himself from work after being re-assigned to the DVTT from the Department of Agriculture, but he did not know whether the allegations were true. It means that the RW1 acted on hearsay evidence to initiate disciplinary proceeding against the claimant. He never took any steps to verify the validity of the allegations. The ECM Education never gave any evidence before this court to confirm that the claimant had indeed absconded duties as alleged. Consequently,



I find and hold that the respondents have miserably failed to prove the validity of the reason cited for terminating the claimant's contract of employment.

43. As regards the procedure followed, the claimant was also not served with any show cause letter to defend himself. RW1 admitted that he wrote the show cause letter dated 12th May 2024 on a Sunday and allegedly served on the department on the same day, which was not an official working day. The claimant denied ever receiving the said letter and averred that the said letter was malicious and deceptive. In *Richard Kiplimo Koech vs Yuko Supermarket Ltd [2015] eKLR* the court held thus: -

“Absence from work without permission or lawful cause is one of the grounds upon which an employer may summarily dismiss an employee. Absence without permission falls under misconduct and pursuant to Section 41 of the *Employment Act*, 2007, a hearing is necessary.

And in my view, it is incumbent upon an employer who alleges that an employee has absconded to make reasonable attempts or efforts to reach the employee and seek any explanation to excuse itself from the application of Section 41 of the *Employment Act*, 2007. A prudent employer such as the Respondent will invariably keep contact details of its employees.”

44. I have already made a finding of fact that the procedure followed did not involve the CPSB and in fact the decision to dismiss the claimant was made by the respondents. The decision was never ratified and affirmed by the CPSB and as such it denied the claimant the right to appeal to the PSC under section 77 of the County Government Act. The hearing was allegedly before a special committee that sat at the County secretary's board room. The claimant denied ever receiving the hearing notice and therefore he never attended. The respondents did not adduce any evidence to prove that the hearing notice was served and received by the claimant.
45. In view of the fact that the claimant was never served with a show cause letter, hearing notice and the hearing was done by strangers in his absence, I find that the termination was not done in accordance with a fair procedure as required under section 41 as read with section 45 (2) (c) of the *Employment Act*. Section 41 provides that:

“41. Notification and hearing before termination on grounds of misconduct

1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”



46. Having found that the claimant has proved that he was dismissed for no valid reason and that fair procedure was not followed, I proceed to hold that the termination was indeed unfair and unlawful within the meaning of section 45 of the *Employment Act*.

Reliefs

47. In view of the above conclusion, I find that he is entitled to a declaration that the termination of his employment was unfair and unlawful. Accordingly, I find that under section 49 and 50 of the *Employment Act*, he is entitled to the prayer for salary in lieu of notice and compensation for the unfair termination. He prayed for Kshs.30,0236 as one-month salary in lieu of notice while the respondents admitted kshs.246,933. No payslip was produced or any other prove of the gross salary except the letter of appointment which indicated a gross monthly salary of Kshs.255,100 which I now award to the claimant.

48. The claimant further prayed for 12 months gross salary being kshs.3,602,832 while the respondents submitted for an amount equal to the salary for the remainder of his contract term equalling to Kshs.1,481,598. Considering that the respondent's proposal fully compensates the claimant for the period he expected to continue working, I find the respondent's offer reasonable and I award the claimant Kshs.1,530,600 as compensation for the unfair termination of his employment based on salary of Kshs.255,100.

49. I further award him gratuities for the period served at the rate of 31% of his basic salary being Kshs.132,000x 18 months x 31% = Kshs.736,560.

50. The claim for leave lacks particulars and supporting evidence and therefore it is declined.

Conclusion

51. I have found that the claimant's employment was unfairly and unlawfully terminated by the respondents and consequently, I enter judgment for him against the respondent as follows:

- a. A declaration that the termination of the Claimant's employment was unfair, illegal and unlawful.
- b. Payment of amount totalling to Kshs.2,522,260
- c. Certificate of service
- d. Costs of the suit plus interests at court rates from the date of this judgment.
- e. The award of damages is subject to statutory deductions.

DATED, SIGNED AND DELIVERED AT NYERI THIS 30TH DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

