



**Wasamu v Judicial Service Commission (Cause E077 of 2024)
[2025] KEELRC 2184 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2184 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E077 OF 2024**

**M MBARÚ, J
JULY 24, 2025**

BETWEEN

SAMUEL OPONDO WASAMU CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The respondent employed the claimant as a Court Assistant II, Clerical Officer, through a letter dated August 15, 2001. He worked at various stations of the Judiciary, and through a letter dated 7 October 2013, he was deployed at Kwale Law Courts.
2. Through a letter dated 30 July 2021, the respondent suspended the claimant on allegations of gross misconduct and that he had under-reported bank revenue amounting to Ksh. 101,111. The claimant's case is that before his suspension, there was no warning or notice for him to explain or answer any matter regarding the allegation under banking, as stated by Peter Oriri Ogutu and the respondent. The head of the station at Kwale Law Courts had exonerated the claimant of any liability, and there was no complaint from the station where there was an alleged under-banking or loss of judicial revenue.
3. The claim is that the respondent directed the claimant to show the cause of his employment not being permitted in the suspension letter, and he submitted a response on 11 August 2021. He attached the letter dated 20 May 2021 from the respondent, in which the respondent noted that receipt serial numbers 3655151 to 3655200, which had been subject to the alleged under-banking, were used to collect fines due to a shortage of Court Fees Receipts at the time.
4. Despite his response, the respondent suspended the claimant through a letter dated 30 July 2021 and subsequently invited him to a disciplinary hearing, as indicated in a letter dated 27 January 2022.
5. The claim is that during the disciplinary hearing, the claimant was not provided with adequate details on the allegations against him, and his main accuser, Peter Oriri Ogutu, was not present



- for examination. There was no proof of any under-banking of Ksh. 101,111, which resulted in the unlawful and unfair termination of employment through a notice dated 16 August 2023.
6. Before the summary dismissal on 16 August 2023, the claimant had learned of the summary dismissal 4 months earlier through the Judiciary HR Bulletin January – March 2023. The summary dismissal letter was effective from 30 July 2021, the date of suspension. This demonstrates that the termination of employment was premeditated and illegal.
 7. The claimant is seeking judgment for:
 - a. A declaration that termination of employment was unfair,
 - b. An order of reinstatement without loss of benefits,
 - c. In the alternative, payment of the following dues,
 - i. Notice pay Ksh.90,600,
 - ii. Half salary during suspension 45,300 x 25 months Ksh. 1,132,500,
 - iii. House allowance at Ksh.25,000 x 25 months Ksh. 625,000,
 - iv. Transport allowance at Ksh.12,000 x 25 months Ksh. 300,000,
 - v. Service pay for years worked Ksh.906,000,
 - vi. 12 months compensation Ksh.1,087,200,
 - vii. Certificate of service,
 - viii. Costs of the suit.
 8. The claimant testified that he worked diligently for the respondent. When he was transferred to Kwale Law Courts, he was assigned duties of assisting in the collection of cash and accounting for it. He had assisted at the cash office several times. For every transaction, he would issue a receipt. There was a different receipt for a fine and revenue collection.
 9. The claimant testified that on 30 June 2021, he was suspended from duty over alleged under banking. He was accused of failing to account for Ksh.101, 111 leading to loss of revenue. This was from an internal audit report at Kwale Law Court. He was given 14 days to respond to the allegations, yet at the time, he was not aware that the auditors had accused him. He asked to be allowed to attend at the Kwale Law Courts to review the reports yet he was not facilitated. Peter Oriri Ogutu’s audit report was not availed to him at the time of his suspension or hearing.
 10. The claimant testified that during his suspension, he was on half salary and this was prolonged for over 6 months and violated his rights. He was invited to the disciplinary hearing on several dates which would be differed due to lack of witnesses and eventually on 16 August 2023 he was dismissed with effect from the date of suspension on 30 June 2021. This violated his rights because his summary dismissal had been announced in the Judiciary HR bulletin for January-March 2023. The respondent had already pre-determined his case and only issued a letter dated 16 August 2023 to sanitize the process.
 11. Upon cross-examination, the claimant admitted that he issued the receipts in question by error and the amounts were accounted for in full and treated as cancelled. He, however, did not countersign the cancellation. He was invited to attend the disciplinary hearing on 3 June 2022 and was later dismissed for the loss of Ksh. 101,111 and gross misconduct.



12. The claimant testified that the backdating of his summary dismissal was unfair and premeditated. He is seeking reinstatement without loss of rank and benefits and payment of his back salaries. In the alternative, the payment of his terminal dues.
13. In response, the respondent's case is that the claimant was lawfully suspended as provided for in law. Following an audit conducted on revenue, deposits, procurement and expenditure management at Kwale Law Court from 1 July 2016 to October 2018. The audit report dated 28 March 2018 established that the accountant in charge, Peter Oriri Ogutu was involved in financial malpractices involving under banking of revenue amounting Ksh. 779,888.70.
14. Upon deliberating Ogutu's case, the respondent's human resource management advisory committee (the committee) recommended that he reconcile the records and share his report. Ogutu did the reconciliation and underbanked, which was attributed to the claimant. There was under surrender for BK No. 3655151-200 for Ksh. 101,111.
15. The committee held a meeting on 9 June 2021 and recommended that the claimant be addressed regarding their involvement in under banking. By letter dated 30 July 2021, the claimant was informed of the charge against him and failure to account for revenue amounting to Ksh. 101,111 and invited to respond. The claimant's financial malpractices were established following the audit at the Kwale Law Courts.
16. The head of the station at the Kwale Law Court did not exonerate the claimant against any malpractices as alleged. The recommendation was that the claimant's response to the charge be considered against the response by the accountant in charge, Ogutu.
17. The charge against the claimant was for failure to account for the under banking of revenue at the station and the succeeding reconciliation report by the accountant in charge, which attributed under banking of Ksh. 101,111 to the claimant. In response, he failed to exonerate himself and was invited to a disciplinary hearing. Through letter dated 30 July 2021, the claimant was informed that during his suspension and pending finalization of the disciplinary hearing, in compliance with section D.7.5.2 (iii) of the Judiciary Human Resource Policies and Procedures Manual and part 17 (3) of the Third Schedule, *Judicial Service Act*, he would be entitled to an alimentary allowance equivalent to one-third of his basic pay.
18. By letter dated 30 July 2024, the claimant was issued a show cause notice for gross misconduct and the particulars given. The charge against the claimant was criminal in nature, which allowed for a suspension from duty until his disciplinary hearing was finalized.
19. The claimant responded to the show cause notice on 11 August 2021. His response was not satisfactory. He was invited to a disciplinary hearing on 27 January 2022, and he attributed the under-banking to a double-entry error. By letter dated 24 February 2022, the claimant was given access to the Kwale Law Courts' books of accounts to enable him to examine the same and provide a comprehensive report supporting his averments. By email dated 15 March 2022, the claimant forwarded his report, and he clarified that the receipt serial No. 3655151-200 was a mistaken receipt No. 3655151 – 200 to be for fines and that he had erroneously issued receipts No.3655171 and 3655171 for Ksh. 91,111. The amount issued against the receipts was accounted in receipt No. 3655067 and 365568 and therefore Ksh. 91,111 from receipt No. 3655151 and 3655172 were to be treated as cancelled and the sum was not brought into the revenue cash book.
20. On 16 June 2022, the claimant was invited to a disciplinary hearing. He submitted that he had no evidence to show that he was authorized to use a receipt for fees and fines since a receipt was cancelled. He did not have evidence to prove that the sum accounted for was brought to the revenue cash book.



The cancelled receipt was not countersigned as per the laid-down procedures, and he did not know where the balance of Ksh. 10,000 was.

21. Following the response by the claimant on 11 August 2021 and the disciplinary hearing on 21 September 2021, which was rescheduled to 28 September 2021, proceedings were deferred to accommodate the claimant due to the COVID pandemic. A new invitation was set for 27 January 2022, and the claimant attended. He was allowed more time to attend at Kwale Law courts to access the necessary documents and records for his responses. The claimant was not required to call Ogotu to exonerate himself as alleged. This was not a requirement at the disciplinary hearing.
22. The HR bulletin referred to by the claimant related to the 4th quarter of the 2022/23 financial year. It did not include the claimant's name. The claimant's summary dismissal was for reasons given to him and not based on the HR bulletin.

The claims made are without merit and should be dismissed with costs.

23. In evidence to support the response, the respondent called Ronald Wanyama, the director of audit and risk management, and Isaac Kamau, the assistant director of human resources management and development, who reiterated the response and said that the claimant's claims are without merit and should be dismissed with costs.

At the close of the hearing, both parties filed written submissions.

24. From the pleadings, the evidence, and the written submissions, the issues that emerge for determination are whether there was unfair termination of employment; whether the claimant should be reinstated to his position with the respondent; and whether the remedies sought should be allowed.
25. Through a notice dated 16 August 2023, the respondent terminated the claimant's employment through summary dismissal with effect from 30 July 2021, the date of his suspension from duty. The reasons for the summary dismissal were gross misconduct arising from failure to account for an under banking of revenue amounting to Ksh. 101,111, leading to a loss of government revenue.
26. An employer is allowed the sanction of summary dismissal of the employee under section 44 of the *Employment Act* for a breach of a fundamental provision of the employment relationship and for gross misconduct. This is on condition that the employee is allowed to attend and make his representations in defence as held in Chingosho, Chairman of the Afraa Disciplinary Committee & another v Indetie [2025] KECA 969 (KLR) and the case of Unilever Tea Kenya Limited v Kenya Plantation & Agricultural Workers Union [2025] KECA 830 (KLR), the court has held that summary dismissal is open to an employer for gross misconduct of the employee.
27. The question then is whether the Respondent had a genuine reason to warrant the Claimant's summary dismissal and whether the Respondent employed fair procedure in reaching its decision. The claimant does not deny that through notice to show cause dated 30 June 2021, he was invited to explain under banking Ksh. 101,111 while at the Kwale Law Courts. He responded and denied the claims and requested access to the records to allow him to make a further response, which was allowed. Through his letter dated 15 March 2022, the claimant submitted his response and noted that the receipts serial numbers 3655151 to 3655200 arose through mistake, as the receipts No. 3655151 to 3655200 to be for fines and therefore issued by error receipts 365571 and 3655172 with a total amount of Ksh. 91,110. The claimant also admitted that he accounted for all monies in receipt No. 3655067 and 3655068, hence Ksh. 91,110 was to be treated as cancelled, but this was not brought to the revenue cash book.
28. In evidence, the claimant admitted that he did not countersign for the errors. He was not authorized to use receipts for fees and fines once a receipt was cancelled. He also admitted that he had no evidence



to prove that the money received was accounted for in the revenue cash book. This was contrary to the procedures laid down, and he did not know where the balance of Ksh. 10,000 was.

29. The claimant was invited to a disciplinary hearing, and the allegations against him were particularised under the notice to show cause and the notice of suspension. He was given sufficient time to access work records to support his representations.
30. The claimant's representations were that it had taken long since he issued the receipts subject to his case, and he could not remember being issued receipt Nos. 3655151 to 200. He blamed the accountant for not raising the issues with him and that it had taken him three years to explain the under banking of Ksh.101, 111.
31. However, the claimant had a duty to undertake his duties with diligence, and the revenue loss under his control had resulted in financial loss to the respondent. He was allowed access to records to assist him in explaining, which he failed to do or account for Ksh. 91,110 and admitting that he could not account for 10,111 cumulatively resulted in the loss of Ksh. 101,111.

This is negligence of duty.

32. Section 44 of the *Employment Act* defines it as gross misconduct subject to summary dismissal.
33. It is not in dispute that the Claimant was taken through a disciplinary process. He had ample time to make his representations.
34. On the remedies sought, summary dismissal was through notice dated 16 August 2023, taking effect from 30 July 2021. The claimant was last on the shop floor on 30 June 2021.
35. The summary dismissal was found justified, and the reinstatement order is unavailable.
36. The alternative remedies of notice pay and compensation are equally unavailable as held in Chingosho, Chairman of the Afraa Disciplinary Committee & another v Indetie [2025] KECA 969 (KLR).
37. However, the practice of the respondent backdating the summary dismissal to the date of suspension is unlawful. The respondent has justified the retrospective application of the summary dismissal from 16 August 2023 to 30 July 2021 based on section D.7.5.2 (iii) of the Judiciary Human Resource Policies and Procedures Manual and part 17 (3) of the Third Schedule, *Judicial Service Act*. The basis was that the claimant would be entitled to an alimentary allowance equivalent to one-third of his basic pay.
38. The policy and procedures manual and schedules to the *Judicial Service Act* cannot negate substantive law protecting an employee's rights in their employment. Under section 18(4) of the *Employment Act*, upon summary dismissal, the employee is entitled to all terminal dues accruing in his employment:
 - (4) Where an employee is summarily dismissed for lawful cause, the employee shall, on dismissal be paid all moneys, allowances and benefits due to him up to the date of his dismissal.
39. The claimant had no control over the disciplinary process, which was under the respondent's control. Backdating the date of the summary dismissal from 16 August 2023 to 30 July 2021 is an unfair labour practice.

The claim for half salary during the suspension period is justified.
40. In the written submissions, the respondent relied on the case of Wahome v Judicial Service Commission [2024] eKLR. However, this case is related to the payment of the alimentary allowance. In this case, the full unpaid salary is due upon summary dismissal.



41. For the 25 months of suspension resulting in summary dismissal, the Ksh. 45,300 x 25 claim is due at Ksh. 1,123,500.
42. The foundation of the claims for house allowance, transport allowance, and service pay at Ksh. 25,000, Ksh. 12,000, and Ksh. 90,000, respectively, is not established. The claimant has not tabled any evidence or basis for claiming the house allowance separate from the salary paid, the justification for the transport allowance while on suspension, or any provision under his employment contract for service pay. These claims are not justified.
43. On costs, the termination of employment was found justified. Except for the unpaid salary during the suspension period, each party should cover its costs.
44. Accordingly, the claim is without merit save for the payment of Ksh. 1,123,500, which is half the salary accruing during the suspension period. Each party is to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 24TH DAY OF JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

