



REPUBLIC OF KENYA



KENYA LAW
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**Rotich v Judicial Service Commission (Cause E772 of 2022)
[2025] KEELRC 2166 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2166 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E772 OF 2022**

**B ONGAYA, J
JULY 23, 2025**

BETWEEN

TIMON KIPKEMEI ROTICH CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The memorandum of claim dated 27.08.2022 was filed through Shehi Kipkorir & Yusuf Advocates LLP, seeking judgment against the respondent for:
 - i. A declaration that the termination was unlawful, wrongful and unfair and a breach of the claimant's fundamental rights under the Constitution of Kenya.
 - ii. Reinstatement of the claimant into service without loss of any benefit.
 - iii. Compensation for the unfair and unlawful termination.
 - iv. Compensation for loss of employment.
 - v. Payment of any unpaid salaries, allowances and benefits.
 - vi. General damages for defamation.
 - vii. Cost of the suit.
 - viii. Interest on the sum awarded at court rates.
 - ix. Any other relief which is just and fair to award the claimant.
2. The claimant's case was as follows:



- a. The respondent employed him as a Clerical Officer on 17.06.2016, and at the time of termination of his employment, he was serving at the Kadhi's Court at Elgon-Road Upper Hill, Nairobi.
- b. He never encountered any challenges during the period of employment until he started experiencing some frustrations.
- c. He received a notice to show cause letter from the Deputy Chief Kadhi, Nairobi, accusing him of soliciting and receiving a bribe of Kshs. 15,000/- from a litigant. He was surprised when he received another notice to show cause from the respondent.
- d. He was summoned to appear for a disciplinary hearing on 22.09.2021 and suspended from duty pending the finalization of the said disciplinary case. As a result of the interdiction, he was condemned to receive only half salary, house allowance and medical benefits.
- e. Whereas he was neither supplied with the particulars of the allegations nor the evidence in support of the allegations to enable him adequately defend himself, he nonetheless responded to the allegations to the best of his knowledge, information and belief.
- f. Through his response letter dated 16.07.2022, he denied soliciting any money from a litigant, Miss. Halima Mwima Noor and detailed the amount he received from the said litigant. He further requested the respondent to furnish him with the investigation report with respect to the alleged solicitation, but the same was never furnished, as no investigation was done.
- g. The respondent flouted his rights to a fair hearing. He was invited for hearings on different occasions, but the hearing was held in a choreographed manner aimed at reaching a decision to dismiss him. The motive of the disciplinary committee was evident from their decision to lock out witnesses who would have given evidence exonerating him, including the said litigant who was willing to testify on his behalf. In addition, the committee did not allow him to properly cross-examine the complainant's witnesses.
- h. He was also not allowed to rely on the letter written by the alleged complainant exonerating him of any wrongdoing.
- i. He received a letter from the Respondent summarily dismissing him from judicial service. The said dismissal was unfair and violated his constitutional rights to fair labour practices and fair administrative action.
- j. The respondent's decision to dismiss him from service is unlawful, wrongful and unfair because there was no sufficient reason for the dismissal. The said decision was reached without sufficient facts and evidence to support the allegations made against him, and the disciplinary committee ignored his defence. Furthermore, the committee irregularly shifted the burden of proof to him and overlooked the fact that there was no complainant. The disciplinary process was conducted in breach of the provisions of the Judicial Service Commission Act, 2011 and the Judiciary Human Resource Policies and Procedures Manual, 2014. He was also dismissed without notice as envisaged in law, and his appeal was dismissed without affording him a chance to be heard.
- k. The unfair termination has exposed him to ridicule and defamed his character. He cannot secure employment anywhere, which subjects him to untold mental anguish.



3. The respondent's amended response to the memorandum of claim is dated 19.02.2025 and filed through G & A Advocates LLP. The respondent prayed that the memorandum of claim dated 27.10.2022 be dismissed with costs to the respondent. It was urged as follows:
- i. The respondent indeed employed the claimant as a Court Assistant II on 17.06.2016 and deployed him to the Kadhi's Court vide a letter dated 28.02.2017.
 - ii. The firm of Sam Ogola raised a complaint against the claimant for soliciting and receiving a bribe from a litigant in Succession Cause No. E044 of 2020. The complaint detailed that Ms. Halima Mwima Noor, a party in the succession cause, had filed an application at the Kadhi's Court in Nairobi seeking orders to access funds from the accounts of the deceased, to pay the estate debts and utility bills accruing from the properties of the estate. The complainant indicated that the said applicant had then made suspicious monetary transactions with some court officials, as evidenced by her M-Pesa statements, and in which payment Kshs. 15,000/- made to the claimant on 14.10.2020.
 - iii. The claimant's response to the show cause letter was unsatisfactory, as elaborated in the amended response. The show cause and charge letter dated 07.07.2021 exposed the claimant's conduct complained of, including the amounts involved and material dates. The claimant was not issued with another show cause letter as alleged.
 - iv. The claimant was provided with the particulars of the allegations made against him in both the show cause and the invitation for disciplinary proceeding letters dated 07.07.2021 and 07.09.2021, respectively.
 - v. Since the claimant admitted in his response letter dated 16.07.2021 to having received the money from Ms. Halima, the matter did not warrant an investigation.
 - vi. The claimant's disciplinary hearing was conducted in compliance with the laws governing the employment of judicial officers in Kenya, and at no point were witnesses locked out from testifying. He was also allowed to make a statement of defence and call witnesses to testify in his defence. He was advised to bring documents in support of his defence and informed of his right to be accompanied by a representative of his choice. However, he neither called any witnesses nor was accompanied to the hearing. He also did not object to the proceedings.
 - vii. At no stage during the claimant's disciplinary hearing process did Ms. Halima intimate that she was willing to testify on behalf of the claimant.
 - viii. Therefore, there existed valid and justifiable reasons to dismiss the claimant, and he was equally afforded due process. It considered all the evidence adduced and established the charge of gross misconduct against the claimant.
 - ix. The communication on the dismissal and the reasons thereof were communicated to the claimant vide a letter dated 22.12.2021.
 - x. The claimant's corrupt practices threatened to tarnish the reputation of the Judiciary and served as a major setback to the respondent's mandate in promoting access to justice and service delivery to all Kenyans.
4. The claimant then filed a reply to the respondent's amended response dated 27.02.2025. He asserted that he received the first notice to show cause from the Head of Station on 22.04.2021 and then the show cause letter dated 07.07.2021. He noted that the particulars of the alleged complaint letter from Sam Ogola & Company Advocates asked for an investigation into the alleged bribery, but the



said allegations were withdrawn by the Objectors' advocate in a letter by the firm of Hassan Lakicha & Company Advocates. He asserted that the mpesa statement indicating the transaction of Kshs. 15,000/- is proof that the applicant had nothing to hide over the said transaction. He maintained that the show cause letter indicated he could only come with a witness who is a judicial staff, and not any other.

5. The parties tendered their evidence before the Court and filed their respective submissions. The claimant testified as CW1 and his 2nd and 3rd witnesses were Hassan Noor Lakicha Advocate and Purity Gakii Muangiri Advocate, respectively. The respondent's witness (RW) was Isaac Kamau. The Court has considered the material on record and returns as follows.
6. To answer the 1st issue, the Court finds that there is no dispute that parties were in a contract of service. The respondent employed the claimant as a Clerical Officer per the letter dated 17.06.2016. Clause 8 of the letter of appointment on conflict of interest provided thus "To avoid an actual conflict of interest or appearance of a conflict of interest, you must not engage in any remunerative activity, including a business or consultancy that seeks to have a relationship with the Judiciary. In the event that you are engaging in such an activity currently, you are required to declare this immediately and cease such activities forthwith to avoid disciplinary action which may include termination of employment."
7. To answer the 2nd issue, the Court finds that there is no dispute that the respondent dismissed the claimant from service by the letter dated 22.12.2021. The reason for dismissal was soliciting and receiving a bribe of Kshs.15, 000.00 from a litigant.
8. The 3rd issue is whether the disciplinary procedure and reason leading to the dismissal were unfair. It is submitted for the claimant that he received but particulars of the allegations were not stated and, nevertheless, he responded to the allegations. The claimant is concerned that the letter dated 21.04.2021 by Sam Ogola & Company Advocates requested for investigations to be carried out but the same was not done or was ignored. In absence of the investigation, it is submitted that the respondent has failed to show that it had a fair and valid reason to dismiss the claimant per section 43 of the Employment Act, 2007. It was submitted that the respondent failed to carry out an independent investigation as envisaged in section 25 (1) of the 3rd schedule of the Judicial Service Act.
9. For the respondent it is submitted that the claimant admitted receiving Kshs.15, 000.00 from the litigant known as Ms. Halima Noor on 14.10.2020 for purposes of effecting service of the court documents (which were filed on 15.10.2020). Further, the claimant had admitted that he ended up not traveling to Kisii until 28.10.2020 when Mr. Ndolo Advocate informed him that he could receive service of the documents as the Advocate had instructions to act accordingly. Further, the claimant had stated that Ms. Noor had asked him to retain the Kshs.2, 000.00 and refund the balance later. The respondent had therefore noted that the claimant who was a licenced process-server had been engaging in private remunerative service of court papers amounting to conflict of interest and contrary to clause 8 in the contract of service. It is the respondent's case and submission that with such glaring evidence amounting to an admission, the respondent did not need to engage in any further inquiry.
10. The Court has considered the rival submissions. To answer whether the dismissal was fair in procedure and substance, the facts and evidence in the case require very close examination.
11. The evidence was that the claimant was heard by the Human Resource Management Advisory Committee on 22.09.2021 and the Committee recommended that the claimant is absolved of the charge of receiving a bribe of Kshs. 15,000.00 from a litigant in succession cause No. E004 of 2020. However, on 09.12.2021 the respondent considered the recommendation and the record and returned that the allegation had been established sufficiently in view of the M-pesa statement as basis of the complaint and the claimant had not declined receipt of the same but only offered explanations. The



- claimant was dismissed effective 07.07.2021, the date of interdiction, and the decision conveyed by letter dated 22.12.2021. The claimant appealed by the letter dated 25.01.2022 but the appeal was declined as not raising any new issue per letter dated 07.06.2022.
12. Confirming the flow of events, the claimant, CW1, testified thus “...Ms. Halima came to know I was a process server as introduced by Head of Registry. I received Kshs.15, 000.00 to serve pleadings. I received it on 14.10.2020. I did not need to notify Head of Station about receiving the money because I was charged with service. I see my contract clause 8 page C56 says I should not engage in any remunerative activity. It was facilitation and not remuneration. I say I was to avoid conflict of interest. I did not travel to Kisii. I did not travel. I refunded Kshs.13, 000.00. I send her Advocate in Nairobi. She allowed me to retain Kshs.2, 000.00 for serving her Advocate in Nairobi. The figure of Kshs.15, 000.00 was during COVID-19 period. It included travel costs and accommodation to and from Kisii. Am not aware of a manual prescribing facilitation fees for service...” The further evidence on record was that the claimant’s Head of Station had assigned the claimant responsibilities to undertake service of court processes per letter dated 17.06.2016 within the job description that he was a Court Assistant and could undertake other assigned duties by the supervisor. The evidence was that he was assigned by Head of Station as a process server per page C62. However, the claimant has not rebutted the respondent’s case that in undertaking such service, he was to be facilitated by the court resources and not the litigant in a private arrangement.
 13. CW2 testified that the claimant received the money but it was for service and not a bribe and CW2 was satisfied with the claimant’s explanation. CW1 who acted for Halima at some point testified that the claimant refunded the Kshs.15,000.00 in full (while the claimant had testified Kshs.2,000.00 was for his retention).
 14. RW testified that the claimant’s Head of Station recommended investigation be undertaken but as at dismissal no such investigations had been undertaken. Further, that no investigations took place because the claimant had admitted retaining Kshs.2, 000.00.
 15. The minutes of the disciplinary hearing 19.11.2021 before the Human Resource Management Advisory Committee and relied upon by the claimant document that the Committee found thus “The Director, Human Resource Management and Development, being the Secretary, advised the Committee that this was a case of gross misconduct. However, the Committee took judicial notice that process servers in the Judiciary/Kadhi Court are paid by lawyers/clients to serve summons and this is bound to continue until the situation is corrected; and, the staff therefore was not culpable of circumstances surrounding process serving procedures at the Kadhi’s Court and should be absolved of the charge.”
 16. In view of the evidence, the Court returns that as urged for the claimant, an inquiry per section 25 (1) of the 3rd schedule of the *Judicial Service Act* was not carried out with the effect that the procedural defect resulted in miscarriage of fairness. The Committee’s record also shows that in his response to the show-cause letter the claimant requested for cross-examination of Ms. Halima Noor but that opportunity was not allowed. To that extent, while notice and a hearing was conducted, it appears to the Court that the procedure adopted by the respondent to dismiss the claimant was not fair.
 17. The Court further returns that it appears that the respondent maintained a deficient operational system or requirements as relates to the role of the claimant at the Courts. While it was suggested for the respondent that the claimant ought to have not engaged in service of court processes at instance of facilitation by the litigant, the Committee confirmed that in fact what the claimant offered to do at facilitation of the litigant was the prevailing practice at the Courts. It then appears to the Court that the claimant ought not to be punished on account of the deficient operational requirements and



which would require, moving forward, appropriate policy interventions. In that respect the Court finds that the reason for termination cannot be said to have been in breach of the respondent's operational requirements per section 45 of the *Employment Act*. In that view, it cannot be said that the respondent had a valid reason to dismiss as at termination or dismissal date. The claimant's case is upheld that the termination was unfair. In *Grace Gacheri Muriithi –Versus- Kenya Literature Bureau (2012) eKLR* the Court held thus, "To ensure stable working relationships between the employers and employees, the court finds that it is unfair labour practice for the employer to fail to act on reported deficiencies in the employer's operational policies and systems. It is also unfair labour practice for the employer to visit upon the employee adverse consequences for losses or injury to the employer attributable to the deficiency in the employer's operational policies and systems. The court further finds that it would be unfair labour practice for the employer to fail to avail the employee a genuine grievance management procedure. The employee is entitled to a fair grievance management procedure with respect to complaints relating to both welfare and employer's operational policies and systems. The court holds that such unfair labour practices are in contravention of Sub Article 41(1) of the *Constitution* that provides for the right of every person to fair labour practices. Further the court holds that where such unfair labour practices constitute the ground for termination or dismissal, the termination or dismissal would invariably be unfair and therefore unjust."

18. The 4th issue is on reliefs prayed for. The Court returns as follows:
- a. The claimant is entitled to the declaration that the termination was unlawful, wrongful and unfair as found in this judgment.
 - b. The claimant is not entitled to reinstatement into service without loss of any benefit because the three years of limitation effective the date of dismissal attached to relief of reinstatement per section 12 of the *Employment and Labour Relations Court Act* have since lapsed. The remedy appears time barred and is declined. The dismissal decision was effective 07.07.2021 and communicated by the letter dated 22.12.2021 and three years lapsed on 22.12.2024. By letter of 07.06.2022 the appeal was declined and three years in that respect would lapse on or about 07.06.2025. Section 12(3) (viii) states that the Court may make an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law. Section 49 of the *Employment Act* provides for factors the Court should consider in granting an order of reinstatement but in view that the three years attached to the remedy have lapsed, the Court will not delve into consideration of appropriateness or otherwise of an order of reinstatement in the instant case.
 - c. The claimant has prayed for compensation for the unfair and unlawful termination. The Court has considered the prayer against the factors in section 49 of the Act. It appears that the claimant contributed to his termination when he retained Kshs.2, 000.00 in unexplained circumstances. There was contradictory evidence about that retention when CW3 testified that the whole of Kshs.15, 000.00 in issue was refunded. In the circumstances, the claimant is awarded 6-months compensation less PAYE should balance justice for the parties.
 - d. The claimant prayed for compensation for loss of employment. The Court finds the prayer not justified because no reason attributable to the respondent as barring the claimant from gainful engagement after the dismissal was established. The prayer is declined.
 - e. The claimant prayed for payment of any unpaid salaries, allowances and benefits. The claim was in the nature of special damages requiring particularization and strict prove. That was not done and the prayer is declined.



- f. The basis for general damages for defamation was not established at all and there being no submissions in that regard, the prayer is deemed abandoned.
 - g. The Court has considered the circumstances of the case including the claimant's contribution to the dismissal and each party to bear own costs of the suit.
19. In conclusion the suit is hereby determined with orders as follows:
- 1. The declaration that the termination was unlawful, wrongful and unfair as found in this judgment.
 - 2. The respondent to pay the claimant 6 months' gross salaries at the rate of the last gross – monthly salary and less PAYE as computed and included in the final decree between the parties and to pay by 01.11.2025 failing interest to run thereon at court rates from the date of this judgment till full payment.
 - 3. The declaration the respondent to issue a standing policy where licenced court process servers may be involved in serving court processes at the instance of litigants.
 - 4. Each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 23RD JULY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

