



**Mwakodi v Kenya Revenue Authority (Cause E943 of 2022)
[2025] KEELRC 2116 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2116 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E943 OF 2022**

**B ONGAYA, J
JULY 17, 2025**

BETWEEN

MICHAEL MWASHO MWAKODI CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim dated 16.12.2022 through Namada & Company Advocates. He prayed for judgment against the respondent for:
 - a. A declaration that the respondent's decision to dismiss the claimant from employment was substantively unjustified and procedurally unfair for lack of materials of proof hence it was unlawful, unfair and inhumane.
 - b. A declaration that the claimant is entitled to payment of his terminal dues and compensatory damages as pleaded above totalling to Kshs. 3,875,000/= being:
 - i. three months' salary in lieu of notice at Kshs. 250,000.00 x 3 = Kshs.750,000.00;
 - ii. pro-rated leave for 6 months/12 months x Kshs.250,000.00 =Kshs.125,000.00;
 - iii. 12-months' salary compensation Kshs.250,000.00 x 12 = Kshs.3,000.000.00;
 - iv. aggravated damages; and,
 - v. certificate of service.
 - c. An order for the respondent to pay the claimant aggravated damages to be assessed by the Court.
 - d. Interest on the awards above from the date of filing the case until full payment.



- e. Costs of the case.
2. The claimant's case was as follows:
- i. The claimant was employed by the respondent as a Management Trainee from November 1996, receiving various commendations and promotions. At the time of his dismissal, he was working as an Assistant Manager, and his last basic salary was computed at Kshs. 250,000/= per month.
 - ii. Sometimes in February 2019, officers from the Intelligence and Strategic Operations Department (ISOD) were assigned to review the respondent's operation at the Mombasa KRA Offices, which review was, however, not specific. Upon their investigations, they raised some queries regarding the system operations, which the claimant responded to appropriately.
 - iii. Around June 2019, the same ISOD officers called and asked the claimant to clarify issues they claimed to have come up during the system review conducted in February 2019. He again responded to the issues raised.
 - iv. He proceeded with his assigned duties without hearing from the ISOD officers, until March 2021, when he was served with a show cause letter on the grounds that he had been negligent while performing his duties, as he had fraudulently approved PAYE amendments for 12 taxpayers sometimes on 20th and 21st September, 2018 while working as a Domestic Taxes Department (DTD) officer in Mombasa.
 - v. He responded to the show cause letter denying the allegations as false and requesting further investigations to be conducted on the respondent's system. According to him, the issue raised was a known system problem in the organization. Despite his request, no investigations were conducted on the respondent's system.
 - vi. The alleged error was occasioned by the system as it failed to pick as required after approval was made, thereby failing to generate the output. The same was reported to the respondent.
 - vii. On 20.04.2021, he received an invitation to appear before a disciplinary panel that was eventually held on 28.04.2021, and consequent to which he was dismissed vide a letter dated 16.06.2021.
 - viii. Prior to the said disciplinary hearing, he was never provided with the investigation report or findings implicating him in any allegations raised against him for him to defend himself. There was also no evidence on record proving that the said cases were indeed fraudulent. In the end, the allegations against him were neither proved nor was evidence provided to that effect.
 - ix. It was within the taxpayer's right to amend their PAYE returns where they had genuine reason(s) to do so, in their assessment, and from their ITAX profiles. Such amendments would ordinarily be informed by either computational errors or employees exiting a company, or layoffs, salary and benefit cuts, among others, which may not have been communicated on time. Furthermore, such an amendment came to the officer as a task in ITAX for approval, and a receipt would then be generated by a taxpayer with the correct amount payable to the respondent.
 - x. Before such tasks reached him for approval, they passed through other officers in the department who were also required to check and confirm such amendments, if any. In this case, none of the approving officers were sanctioned for any negligence.



- xii. Therefore, at no time was he negligent in performing his duties, as the system is automated and any interference with it would have reflected such attempts of interference. Further, the operation of the system was based on the input made, in this case by the taxpayer, which in turn computation was to be done and an output given.
 - xiii. An investigation on the system would have shown evidence of interference, if at all. However, the allegations against him were never substantiated before his dismissal, making his dismissal unfair and unjustified.
 - xiv. Following his dismissal, he wrote a letter dated 28.06.2021, appealing the respondent's decision and further submitted to the respondent the necessary evidence for consideration. However, his appeal was dismissed without consideration of the material evidence that would have exonerated him, and he was therefore summarily dismissed.
 - xv. The respondent's decision to dismiss his appeal before the expiry of the 30 days stipulated in the code of conduct was unfair as it denied him the right to a fair hearing.
 - xvi. The summary dismissal was unlawful and unfair, and, there was malice and premeditation in the effort to dismiss him as outlined in the memorandum of claim.
 - xvii. He had neither taken his leave for the last year of service nor paid in lieu thereof. He also seeks compensatory damages for the dismissal, plus aggravated damages for the malice based on the false and unproven reasons for dismissing him from employment. He further prays for three months' salary in lieu of notice, pro-rated leave for six months worked in 2021, and a certificate of service.
3. The respondent's amended respondent's statement of response dated 24.02.2023 was filed through Lydia Ng'ang'a, Advocate. The respondent prayed that the claimant's suit be dismissed with costs for being devoid of merit. Its case was as follows:
- a. The claimant joined its employment as a graduate trainee and was appointed as an Inspector II Job Group 'J' in the Value Added Tax Department vide a letter Ref: Conf/005581 dated 11.03.1998. He worked as an Assistant Manager until his services were terminated vide a letter Ref Conf/ 5581 (3) dated 16.06.2021 on account of negligence of duty.
 - b. The claimant's contract of employment was at all material times governed by the provisions of the *Kenya Revenue Act, Value Added Tax Act, Income Tax Act, Tax Procedures Act, East Africa Customs Management Act* and the Code of Conduct, and all relevant and enabling enactments.
 - c. It received an Investigation Report dated 02.07.2019 from the ISOD on the circumstances under which the claimant had approved the downward amendments of PAYE for 12 taxpayers domiciled at Mombasa North Taxpayers' Office. The said approval was contrary to the DTD - Relationship Management Manual, which requires a compliance officer to seek and document evidence for the application to amend the return. It was a clear case of negligence of duty on the part of the claimant, which is gross misconduct to warrant his summary dismissal in line with the law.
 - d. The claimant's actions led to a loss of revenue of Kshs. 604,079.74. The findings of the investigation report led to the issuance of a show cause letter dated 18.03.2021, together with a copy of the investigation report on 19.03.2021 to the claimant vide the Lotus email.
 - e. The allegations set out against the claimant were serious and amounted to a grave violation of clauses 6.1.1.3, 6.1.2.5.2, 6.1.2.5.4, and 6.2.4.7 of the respondent's Code of Conduct.



- f. The claimant responded to the show cause letter vide a letter dated 30.03.2021, and later appeared before the disciplinary panel for oral representation on the allegations of negligence of duty. Upon terminating his services, he was notified of the terms of the termination and the benefits he was entitled to.
 - g. The termination of the claimant's termination was in line with clauses 6.1.1.3, 6.1.2.5.2, 6.1.2.5.4, and 6.2,4.7 of its Code of Conduct as read with Section 44(4) (c) and (g) of the [Employment Act](#), 2007.
 - h. It rejected the claimant's appeal through a letter dated 12.07.2021, as he had not adduced any new evidence to warrant a review of its decision as per clause 9.1.2 of the Code of Conduct. It further rejected his subsequent appeal of 02.08.2021, vide its letter of 27.09.2021, on the basis that the Code of Conduct only allows for one appeal.
 - i. It denies that the claimant requested, through his response to the show cause letter, for further investigations to be conducted on its system. Furthermore, the assertion that he did not receive the Investigation Report is misleading and an afterthought since he neither raised the issue during his disciplinary hearing nor in his appeals against the termination.
 - j. The claimant was given the opportunity to prove his case, but he failed to adduce any evidence when making both his oral and written representations to justify his actions of approving PAYE amendments for the twelve Taxpayers. He was taken through a fair, lawful and expeditious disciplinary process in line with the company's disciplinary policy.
 - k. The offence was fraudulently approving PAYE amendments contrary to the Manual, and not interfering with the system.
 - l. Despite finding the claimant culpable of the offence of negligence of duty, it exercised leniency by terminating his employment and paying him three months' salary in lieu of notice instead of summary dismissal. He will thus be paid three months' notice pay as stated in his termination letter.
 - m. According to the leave management system records, the claimant had earned 23 leave days that will be computed and commuted upon clearance with the respondent. He will also be subsequently issued with a certificate of service.
 - n. The claimant is not eligible for payment of any compensatory damages or aggravated damages whatsoever since due process was followed and the offence of negligence of duty was proven, leading to termination of his services.
4. The claimant then filed his response to amended respondent's statement of response dated 24.04.2023. He averred that at the time of the inquiry in February 2019, he had already transferred to his new station in Mombasa South, and the inquiry was in respect of duties undertaken while working in the Mombasa North Office. He noted that the said Domestic Taxes Department Compliance Management Manual, 4th Edition, Version 1 came into operation in May 2019, way after the approvals had been made and that the manual that was in use before it was the one for 2016, which did not specifically provide for the Sector Manager or Compliance Manager to seek documentary evidence before any approval. He confirmed having received the show cause letter together with the Investigation Report, but asserted that the same were mere allegations yet to be substantiated. He stated he was yet to clear with the respondent because of the instant case.



5. The parties gave their evidence before the Court and filed their respective written submissions. The Court has considered the material on record and returns as follows.
6. To answer the 1st issue the Court returns that there is no dispute that parties were in a contract of service. The claimant had worked for the respondent for a long period over 24 years. His last designation was Assistant Manager earning Kshs.250, 000.00 per month.
7. To answer the 2nd issue the Court finds that the contract of service was terminated by the letter dated 16.06.2021. The reason for the termination was that the claimant fraudulently approved PAYE amendments for 12 taxpayers as set out in a table in the letter of termination. The termination letter further stated thus “It is established that the twelve (12) taxpayers listed above had paid in full the amount of PAYE in self-tax assessment. Your approval to amend PAYE downwards increased the credit of the respective taxpayers by the equivalent of the amount of the downward amendments resulting to loss of revenue to the Authority of up to a total of Kshs.604,079.74.

The above stated malpractices confirm your culpability for the offence of negligent of duty which is a serious offence of gross misconduct that warrant for your summary dismissal in line with Section 44.4 (c) (g) of the *Employment Act* 2007 as well as Clauses 6.1.1.3, 6.1.2.5, 6.1.2.5.4 and 6.2.4.7 of the KRA Code of Conduct.

Consequently a decision has been reached to terminate your services with the Authority (KRA) with immediate effect for committing the above stated offence.”

He was to be paid basic salary, house allowance and transport allowance up to and including 16.06.2021 and three months’ salary in lieu of notice. He was to be paid a pension per the KRA Pension Trust Deed and Rules upon production of Pension Commutation Form and Clearance Certificate. The claimant appealed against the termination by the letter of appeal dated 28.06.2021. By the letter dated 12.07.2021, the respondent upheld the termination on account that upon review of the appeal the respondent found no new grounds to warrant a review. The claimant by letter dated 27.08.2021 applied for a review of decision on appeal urging that the respondent had 30 days (per the Code of Conduct and Ethics) to determine the initial appeal and the claimant had provided his evidence forwarded by the letter of 14.07.2021. He asked for a review. By letter dated 27.09.2021 the respondent replied that clause 9.1.1 of the Code of Conduct allowed for only one appeal and the claimant’s re-appeal was therefore disallowed.

8. To answer the 3rd issue, the Court observes that the respondent substantially complied with a fair procedure being a notice and a hearing as envisaged in section 41 of the *Employment Act*. He received a letter to show cause; he replied, he attended disciplinary hearing, the verdict was communicated per the letter of appeal, termination was upheld, he then re-appealed and the re-appeal was disallowed upon the technicality that the Code of Conduct allowed only one appeal. It appears to the Court that the respondent cannot be faulted in the manner the re-appeal was handled. It is submitted and urged for the claimant that the respondent decided the appeal prior to lapsing of the 30-days period allowed and in circumstances that the claimant submitted his detailed appeal on 15.07.2021 with due evidence. The Court finds that the respondent adopted a fair procedure. The respondent’s case and submissions in that respect is upheld.
9. The 4th issue is whether the reason for termination existed as at termination per section 43 of the *Employment Act* and whether it was a fair reason per section 45 of the Act as relating to claimant’s conduct, compatibility and the respondent’s operational requirements. The testimonies by the claimant and the respondent’s witness (RW1) being the investigator Edna Mwalenga, the claimant was responsible (and it was within his job description) to approve amendments of PAYE by taxpayers. The claimant took considerable time explaining that he was not aware of the manual of 2016 relied



upon on applicable procedures and that the manual of 2013 (he was aware of) did not prescribe a need for him to follow up with the taxpayers about the documents to verify the amendment. However the claimant in his reply to the show cause letter and in his testimony confirmed consulting the taxpayers in issue and further that the error of zero returns was an i-tax system error especially that the respondent lost no revenues in that respect. In particular he had consulted the relevant ledger entries and confirmed that the taxpayers had indeed paid the due tax.

10. The Court has evaluated the testimonies and the material on record. The evidence, on a balance of probabilities, is that there was i-tax system error that appears to have been visited upon the claimant and unfairly so. By way of sample and with reference to a taxpayer known as Bahari Education Services RW2 testified as follows “I see memo of claim. I see pg. C42 of the bundle. It is the original PAYE return by Bahari Education Services. It had a return, nil return. It is original return. The amount of tax self-assessed is Kshs.8, 898.00. I see pg. C44. It is amended PAYE return for same taxpayer. The i-tax system computes total amount of tax per payer’s posted data. System totalled Kshs. 8,898.00 as amount payable. Pg. C 42 gives names of staff members and due PAYE. It gives Kshs.8, 898.00. I see amendment pg. 44. Previous return is amended. Staff names are populated. I see end of the amount payable per staff member. The system is totalling the amount to zero. The customer in-put the figures. It is zero per pg.C 44. It is zero self – assessed tax. I see zero self-assessed tax at bottom. The figures populated are there 130, etc. It is the system calculating. The school filled figures and then filed the zero total PAYE. I explain i-tax files the figures. When tax payer filed return they stated it was nil. I say am not dishonest. The taxpayer manually filled zero return. I-tax picked the zero.” While RW 2 is apparently contradictory in her evidence that i-tax system picked the zero from the taxpayer’s manual entry and at ago stating that the i-tax had generated zero computation despite the customer manually populating the names of the staff and due PAYE (contradictory testimony being of low or no probative value, RW confirmed in the testimony that Bahari Education Services original PAYE was for Kshs.8,898.00 and which the taxpayer had actually paid even after the amendment to zero. The Court finds that the respondent has failed to show the alleged fraud. RW 2 confirmed thus, “As of today the school has never claimed about the Kshs. 8,898.00. Am not aware of the claim for refund. I say they made the payment, all the 12 taxpayers. The 12 taxpayers never claimed the refund as far as am aware. Am not aware that they used the zero return amendments to downgrade their tax returns.”
11. It is not established that the claimant acted as to mislead the respondent using deception in reliance upon false information for self-gain. It is also not established that the claimant breached the duty of care owed to the respondent with a consequence that the respondent suffered a loss. The Court therefore concludes that as at termination, the respondent has failed to show the alleged fraud or negligence of duty. The reasons for termination are therefore found to have been non-existent per section 43 of the Employment Act, 2007 and not fair within the tests set in section 45 of the Act.
12. The 5th issue is on remedies. The Court returns as follows. The claimant has established that the termination was unfair. The mitigating factors in view of section 49 of the Act is that the respondent was willing to pay in lieu of notice and prorated leave days but which was not done. Further, the Court has considered that the respondent set out to comply with a fair procedure. The aggravating factors include the claimant’s long and clean service. Further, it appears that the claimant was being punished otherwise due to the respondent’s own deficient operational system manifested in the investigators failure, despite access to the ledger records, that no fraud or loss had occurred. To balance justice for parties the claimant is awarded ten months’ gross salaries in compensation for the unfair termination making Kshs. 2, 500, 000.00. Uncontested pay in lieu of notice Kshs.750, 000.00 and prorated leave at Kshs.125, 000.00 are awarded as claimed and prayed for. In urging the aggravated damages it was submitted that the claimant had worked for a long period of time of over 24-months and was over 50 years. Such are aggravating factors already considered under section 49 of the Act in awarding 10



months' salaries in compensation. The Court considers that the award under section 49 of the Act meets ends of justice and there is no established justification for award of aggravated damages in the instant case. The claimant has succeeded and is awarded costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for:

1. The declaration that the termination was unfair.
2. The respondent to pay the claimant Kshs. 3, 375,000.00 (less PAYE) by 01.09.2025 failing interest to run thereon at court rates from the date of this judgment till full payment.
3. The respondent to issue and deliver the claimant's certificate of service by 01.09.2025.
4. The respondent to pay the claimant's costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 17TH JULY, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

