



**Mfundu v Micro and Small Enterprises Authority (Cause E507 of 2020)
[2024] KEELRC 1507 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1507 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E507 OF 2020**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

FRANCIS NJIRUH MFUNDI CLAIMANT

AND

MICRO AND SMALL ENTERPRISES AUTHORITY RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, dated 4th September 2020.
2. He avers that he was employed by the Respondent as the Director of MSE Strategy, Planning and Coordination, for a renewable period of 4 years, vide a letter dated 10th July 2019. He reported for duty on 1st August 2019.
3. The Respondent issued him a letter to show cause, dated 6th September 2019, alleging that the Claimant had falsified academic and professional certificates.
4. He responded to the letter to show cause on 11th September 2019 denying the allegation, and asking to be furnished with certified copies of the documents in question, a request that was not met. The Respondent instead exerted pressure on the Claimant to resign.
5. He was suspended on 11th December 2019. He was heard by the Human Resource Committee of the Respondent, on 18th December 2019. He was heard further, on 16th January 2020. He was not informed of his procedural rights at the hearing.
6. His contract was terminated on 24th January 2020, on account of falsification of documents.
7. He avers that termination was unfair and unlawful because he was not given a written notice of 3 months required under his contract; no disciplinary hearing was conducted; the CEO who was the complainant sat in the Human Resource Committee which heard the Claimant; and, his salary for September 2019 to January 2020 was not paid.



8. He prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Declaration that he is entitled to payment of terminal dues.
 - c. Declaration that the Respondent defamed him.
 - d. Kshs. 33,119,795 made up as follows-
Salary for September 2019 to January 2020 at Kshs. 1,503,050.3 months' salary in lieu of notice at Kshs. 901,830. Leave allowance of 15 days at Kshs. 25,000. Accrued gratuity at Kshs. 46,595.12 months' salary in compensation for unfair termination at Kshs. 3,607,320. Salary for the remainder of the contract at Kshs. 12,606,720. Salary for the expected renewed period of 4 years at Kshs. 14,429,2180.
 - e. Damages for defamation at the Court's discretion.
 - f. Exemplary damages at the Court's discretion.
 - g. Interest.
 - h. Costs.
9. The Respondent filed its Statement of Response, dated 28th October 2020. Its position is that on 21st May 2019, it advertised various vacancies, including that of Director, MSE Strategy, Planning and Coordination, a vacancy the Claimant applied for.
10. The requirements were stated to include: minimum experience of 12 years in the relevant field; Bachelor's Degree in economics, statistics, strategic planning/management, business administration or equivalent qualification in related field from recognized institution; Master's Degree in the same fields; membership of professional body; certificate in leadership; and, in monitoring, evaluation or other related qualifications. In addition, candidates were required to satisfy the principles of leadership and integrity, prescribed under Article 6 of *the Constitution*.
11. The Claimant presented forged Bachelor of Arts [Economics] Degree from the University of Nairobi, serial no. 1257, Bachelor of Arts Degree Certificate serial no. 4752 from University of Nairobi and Strategic Leadership Development Programme Certificate [SLDP] serial no. 39703, from the Kenya School of Government. He misled the Respondent from the inception with forged documents, to secure the job.
12. Falsification was confirmed by the relevant academic institutions alleged to have issued the certificates upon the Claimant.
13. He was dismissed on valid grounds. He was engaged in acts of gross misconduct, and violation of Public Service Values and Principles, contrary to Article 232 of *the Constitution*, the *Public Service Commission Act*, the Public Service [Values and Principles] Act, and Section 44 [4] [g] of the *Employment Act*. He was dismissed on valid ground.
14. The Claimant gave evidence, and closed his case, on 16th December 2022. Acting Head of Human Resource Department, Marcela Tumo, gave evidence for the Respondent on 19th September 2023, closing the hearing. The Claim was last mentioned before the Court on 22nd February 2024.
15. The Respondent filed an application dated 16th November 2023, seeking to introduce fresh documents, after both Parties had given evidence, hearing closed, and submissions made. The Court directed that the application be considered on the strength of written submissions, the Claimant having filed his replying affidavit sworn on 17th January 2024.



16. The Court has considered the application, and finds the same to be in abuse of the process of the Court, having been presented after the Court has closed the proceedings, and Parties sought a date for delivery of Judgment.
17. It is ordered that: [a] the application filed by the Respondent dated 16th November 2023, is dismissed, with no order on the costs; and [b] delivery of Judgment to proceed on notice, as was intended before the filing of the Respondent's belated application.
18. The Claimant relied on his 2 witness statements on record and documents exhibited as [1-14] and [15-17], in his evidence-in-chief. The contents of these witness statements are the same as detailed in the pleadings.
19. He emphasized that his diploma was confirmed by the Kenya Bankers Association to be equivalent of a Bachelor's Degree. He availed his Master's Degree certificate from Moi University. To be admitted to Moi University, he must have had a Bachelor's Degree or its equivalent. He was enrolled on the strength of his Diploma. He presented these documents on recruitment. He told the Court that he had the clearance of Ethics and Anti-Corruption Commission [EACC].
20. Cross-examined, he told the Court that he applied for the advertised job, and had the relevant qualifications. He did not have a Bachelor's Degree. He had a Diploma which was certified by the Kenya Bankers Association, to be equivalent of Bachelor's Degree. He completed Diploma in London. He studied through the Kenya Bankers Association between 1991 and 1997. The Diploma certificate did not indicate that it was equivalent to Bachelor's Degree. He did not have a certificate in leadership. In the personal declaration form the Claimant filed for purposes of EACC clearance, he stated that he had Bachelor's Degree. He signed the declaration on 15th August 2019. He was required to report on 1st September 2019. He reported a month earlier on 1st August 2019.
21. He conceded that he was bound by the Respondent's Human Resource Policies and Procedures Manual. The Manual authorized the Respondent to authenticate academic and professional documents submitted by its Employees, from time to time.
22. There were 2 Degree Certificates the Respondent alleged to have received from the Claimant. They were from the University of Nairobi. They were in his name. One was Bachelor's Degree in Arts [Economics], the other Bachelor's Degree in Arts [plain]. The University of Nairobi wrote to the Respondent, stating that the Certificates were forgeries.
23. The Claimant told the Court that he did not supply the Certificates to the Respondent.
24. He served the Respondent for less than a month, before his certificates were questioned. There were several Employees affected.
25. He was granted a hearing. He was issued a letter to show cause. He replied. He was heard around January 2020, and dismissed around February 2020.
26. Redirected, he told the Court that the Respondent interviewed him, and was satisfied that he was qualified for the position. He had a Master's Degree from Moi University. He could not have obtained this without a Bachelor's Degree or its equivalent. He saw copies of the Bachelor Degree Certificates from the University of Nairobi for the first time, in Court.
27. Mercela Tumo relied on witness statement and documents filed by the Respondent in her evidence-in-chief. The documents are dated 28th October 2022 and 14th June 2022. The Claimant was taken



- through a fair disciplinary process and dismissed. His academic documents were not valid. The Respondent confirmed this with the relevant institutions. The Claimant did not meet the required qualifications. He had been recruited at face value, based on what he presented. The Respondent verified the documents in accordance with its Human Resource Policies and Procedures Manual. They were forgeries.
28. Cross-examined, Marcela told the Court that the job advertisement called for candidates with Bachelor's Degree or its equivalent.
 29. The Claimant made a job application. He listed his qualifications. He stated that he had a Master's Degree and a Diploma Certificate. He did not state that he held a Bachelor's Degree. These are the same qualifications he disclosed on his CV. The Respondent wrote to the EACC, which confirmed that the Claimant had not attached any Bachelor's Degree certificate, to his application. In his reply to the letter to show cause, he asked to be supplied with certified copies of Degree Certificates he was alleged to have forged. The Certificates were not supplied. The Kenya Bankers Association wrote to the Respondent, saying that the Diploma was higher than a 1st Degree. All other documents were confirmed to be authentic. Redirected, Marcela told the Court that the Claimant was dismissed on account of falsification of documents. The forged Certificates were received from the Claimant.
 30. The issues are whether the Claimant's contract was terminated on valid grounds; whether termination was fairly executed; and whether he merits the remedies sought.

The Court Finds: -

31. The Claimant was employed by the Respondent Authority, in the position of Director- MSE Strategy, Planning and Coordination. This was following a job advertisement and interview, carried out by the Respondent.
32. His offer of appointment is dated 10th July 2019. He was required to report not later than 1st September 2019. He reported on 1st August 2019, which was within the instruction.
33. He was offered a gross monthly salary of Kshs. 300,610.
34. His contract was terminated on 24th January 2020, on the ground that he presented false academic records, upon his recruitment. These were specified to be: Bachelor's of Arts [Economics] Degree; and Bachelor's of Arts Degree [plain], both from the University of Nairobi.
35. The starting point, in examining the validity of the grounds stated by the Respondent, to justify termination, is the Claimant's letter dated 7th June 2019, through which he applied for the job vacancy, as advertised by the Respondent.
36. He stated clearly that he holds a Master's Degree in Business Administration [Executive] –Strategic Management, a Diploma in Banking [UK], an Associate of the Chartered Institute of Bankers [UK] and Kenya Institute of Bankers.
37. He did not mention that he held the Bachelor's Degree Certificates from the University of Nairobi.
38. This was confirmed by the Witness for the Respondent Marcela, who also confirmed that the Claimant did not mention Bachelor's Degree Certificates, in his CV.
39. He denies that he presented the two Bachelor's of Arts Degree Certificates exhibited by the Respondent, and it would be difficult not believe him, because he did not mention such Certificates in his job application, and his CV, from the inception. He made full disclosure, that he held an MBA



- [Executive] Degree Certificate from the Moi University, and Diploma from Chartered Institute of Bankers.
40. The Respondent was not clear when and under what circumstances, it received the Bachelor's Degree Certificates, allegedly issued by the University of Nairobi, in the Claimant's name. If the Claimant did not mention them in his job application and in his CV, when did the Respondent obtain these Certificates and for what purpose?
 41. It was the Respondent which submitted the 2 Certificates to the EACC, who in a letter dated 29th April 2021, confirmed that, the Certificates were not authentic, and were not issued by the University of Nairobi.
 42. There was no question about the authenticity of the MBA and Diploma Certificates, presented by the Claimant.
 43. The EACC investigated and concluded the matter and forwarded the file to the Director of Public Prosecutions. At the time of hearing this Claim, there was no evidence of prosecution carried out through the Director of Public Prosecutions, and the origin of the Bachelor's Degree Certificates in the custody of the Respondent, remained unestablished.
 44. It is noted also that in his application for MBA course at the Moi University, the Claimant only stated that he had attended the Chartered Institute of Bankers, and obtained Associate of the Chartered Institute of Bankers [ACIB].
 45. The Moi University admitted him to its Master's programme, on the strength of his Diploma.
 46. It is not doubted that the 2 Degree Certificates were fake. The University of Nairobi and the EACC confirmed that they were fake. What was not established, was that it was the Claimant, who placed the Certificates in the custody of the Respondent. The Respondent, not the Claimant, forwarded the copies of the Certificates to the University of Nairobi and the EACC. The Claimant certainly did not make reference to such Certificates in his job application and CV. The Respondent did not supply him certified copies of these Certificates, when he requested for such, in response to the Respondent's letter to show cause.
 47. Did the Respondent therefore, have reasonable and valid grounds, to justify termination, in light of lack of confirmation that the Claimant was the origin of the 2 fake Bachelor's Degree Certificates, allegedly from the University of Nairobi?
 48. On 14th August 2019, the Claimant executed a self-declaration form, making certain statements concerning his personal details, before a Commissioner for Oaths.
 49. The form is required under *Leadership and Integrity Act* 2012, and was submitted to the EACC on 15th August 2019. The Claimant had already reported to work on 1st August 2019.
 50. The Claimant indicated in the form, his educational qualifications include Primary Certificate, Secondary Certificate, Diploma Certificate, Degree Certificate, and Master's Degree Certificate.
 51. He declared that he not only had a Diploma and Master's Degree Certificates, but also, Bachelor's Degree Certificates. The Claimant confirmed in his evidence that he indicated he had Bachelor's Degree Certificate, in his self-declaration forms.
 52. This was inconsistent with his job application and CV. The Respondent would logically have reason to suspect that the Claimant misrepresented his qualifications from the inception, going by these inconsistencies.



53. Any reasonable person could have linked the mysterious emergence of Bachelor's Degree Certificates, from the University of Nairobi, in the name of the Claimant, to his self-declaration under oath, that he held Bachelor's Degree Certificate. It was an unusual coincidence, to have the Claimant declare that he holds Bachelor's of Arts Degree Certificates, and to have the mysterious presence of such doctored Certificates in his personnel file.
54. And why is it, that the Claimant was not perturbed by the emergence of fake Bachelor's Degree Certificates bearing his name, allegedly from the University of Nairobi? Would not an ethical and conscientious public servant take the lead in establishing who authored, and issued fake Degree Certificates in his name, and for what purpose? The Claimant did not express anger at the emergence of fake Degree Certificates, bearing his name. He was comfortable, merely throwing the gauntlet at the Respondent, to prove that he supplied the fake Degree Certificates to the Respondent.
55. Section 43 of the *Employment Act* requires an Employer to prove reason or reasons, in justifying termination. This law states that, "the reason or reasons for termination of a contract are matters that the Employer, at the time of termination, genuinely believed to exist, and which caused the Employer to terminate the services of the Employee."
56. The standard of proof does not therefore call for investigations and conclusion of matters by the EACC, The Director of Public Prosecution or the Courts. The Employer is only required to have a genuine belief in the existence of the matters justifying termination.
57. The Respondent had a genuine belief that the Claimant had presented false academic information, in his recruitment process. He self-declared on oath that he had Bachelor's Degree. The job advertisement called for candidate with Bachelor's Degree among other qualifications.
58. His position that his Diploma was the equivalent of, or higher than, a Bachelor's Degree, is neither here nor there. The statutory mandate to determine if a Diploma equates to, or is higher than, a Bachelor's Degree, would, in the humble view of the Court, vest with the Kenyan Commission for University Education. It is not for institutions offering Diploma Courses, in London or Nairobi, to determine that their Diploma Certificates, are equivalent of, or higher than Degree Certificates, issued by our Universities. It was not for the Institute of Bankers in Kenya or UK, to rate its Diploma at par or higher than a Kenyan Bachelor's Degree.
59. The admission of the Claimant by Moi University, to study MBA did not prove that he held a Bachelor's Degree or its equivalent. Moi University must have admitted the Claimant in accordance with its own admission criteria, which can only be binding between Moi University and its Students. Admission for MBA could not be evidence of the Claimant's academic qualification, as a Bachelor's Degree holder.
60. The Court is satisfied that the Respondent had valid grounds, to terminate the Claimant's contract, under Sections 43 and 44[4][g] of the *Employment Act*.
61. Disciplinary action was in conformity with clause 10.23 of the Respondent's Human Capital & Administration Manual [Human Resource Manual]. The clause expands the list of acts of gross misconduct under Section 44[4] of the *Employment Act*. It includes making a false statement or declaration in matters on which an Employee, is required to respond to the Authority [vii]; and, dishonesty reflecting adversely on the honesty and moral integrity of the Employee [xxix]. The Respondent was justified in terminating the Claimant's contract, under any, or all, of these legal provisions and human resource policy clauses.



62. Procedure was fair. The Claimant told the Court that the Respondent wrote to him asking him to verify his academic records. He was issued a letter to show cause. The charges were spelt out in the letter. He replied in accordance with the Human Resources Manual. He was invited for disciplinary hearing in January 2020. He was heard in February 2020.
63. He told the Court that he came to learn that his terminal dues were paid. The Respondent exhibited a letter dated 1st April 2020, to National Bank of Kenya, effecting electronic funds transfer in the sum of Kshs. 175,410 in favour of the Claimant. There is also exhibited a clearance certificate for officers on exit, filled with respect to the Claimant.
64. The Claimant worked for a very short period before he was suspended and eventually dismissed on account of his fake academic credentials. He was instructed to report not later than 1st September 2019, and the letter to show cause issued on 6th September 2019, barely a week after he was meant to report. He had in fact rendered no public service worth of note, by the time of dismissal. The employer-employee relationship was still at its formative stage, with the Respondent allowed to dig deeper into the Claimant's academic and professional background, before employment was consummated.
65. The Court does not see how, even had he established that termination was unlawful and unfair, the Claimant would be entitled to the colossal amount of Kshs. 33.1 million, in addition to general damages for defamation and exemplary damages. In Petition 138 of 2016 between Moni Wekesa v. Mt.Kenya University, the Court deplored the trend, where claims for unfair termination, have been turned into a cash-grab industry. The Claimant definitely approached the Court with this cash-grab mentality, having worked for a very limited period with the Respondent, to justify accrual of a sum of Kshs. 33.1 million- plus, as compensation and terminal benefits.

IT IS ORDERED: -

- a. The Claim is declined.
- b. Costs to the Respondent.

Dated, signed and released to the Parties electronically at Nairobi, under Practice Direction 6[2] of the Electronic Case Management Practice Directions, 2020, this 14th day of June 2024.

James Rika

Judge

