



REPUBLIC OF KENYA



**Sidika v Judicial Service Commission (Cause E039 of 2023)
[2024] KEELRC 13348 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13348 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E039 OF 2023
CN BAARI, J
DECEMBER 5, 2024**

BETWEEN

KENNEDY ODHIAMBO SIDIKA CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

Introduction

1. The Claimant's case against the Respondent is carried in a Memorandum of Claim dated 14th June, 2023 and filed on 15th June, 2023. He seeks the following reliefs; -
 - i. A declaration that his termination was unfair for failing to comply with rules of natural justice and the mandatory provisions of the Employment Act 2007 and the Constitution of Kenya 2010
 - ii. The unlawfully withheld 2/3 of the salary from 7/7/2020 to date
 - iii. Reinstatement without loss of benefit
 - iv. In the alternative, an award of compensation for wrongful dismissal
 - v. Certificate of Service
 - vi. Costs and interest of this suit
2. In a response dated 12th September, 2023, the Respondent acknowledged the Claimant's employment, and avers that it dismissed the Claimant for gross misconduct.
3. The matter was first heard on 19th February, 2024, with the Claimant testifying in support of his case. The Respondent's case was heard on 12th June, 2024, when one Mr. Isaac Kamau, the Respondent's Assistant Director for Human Resources testified in support of the Respondent's case. The witnesses



adopted their witness statements and produced documents filed in the matter as exhibits in their respective cases.

4. Both parties filed submissions in the matter.

The Claimant's Case

5. The Claimant states that he was an employee of the Respondent appointed on 26th November 2012, as a store keeper II (PLS 6). He states that he served the Respondent diligently and with loyalty, as a result of which the Respondent rewarded him for exemplary service by confirming his appointment and admitted him to its permanent and pensionable establishment with effect from 7th February, 2012.
6. It is his case that on 1st October 2019, he received a letter dated 25th September, 2019 through the head of station- Winam Senior Resident Magistrate Court from the Respondent reference "Gross Misconduct". That in the said letter, it was alleged that a report was made to the Respondent on 22nd August 2018 regarding disappearance of Criminal Case File No. 1049 of 2015 Republic -vs- George Otieno Abuto. It is his contention that according to an investigation conducted on 5th September, 2019 by the Director of Criminal Investigations (DCI)- Kondele, it was revealed that he was involved in the disappearance of the file.
7. It is his case that the letter dated 25th September, 2019 alleged that he had breached integrity and proper handling of matters policy relating to Judiciary, and that he was negligent at work, which amounted to gross misconduct and could lead to his dismissal from service pursuant to Judiciary Resource Policies and Procedures Manual of 2014, and the Employment Act 2007.
8. The Claimant states that the letter further called upon him to show cause why disciplinary action should not be taken against him, and interdicted him from work with immediate effect.
9. It is his case that he responded to the notice to show cause vide a letter dated 8th October 2019 which was received by the head of station- Senior Resident Magistrates Court Winam Law Court on 9th October 2019. He avers the in his response, he indicated that he had no idea about the disappearance of Winam Criminal Case No. 1049 of 2015, and further denied any involvement in the disappearance of the file noting that he worked as store keeper and never handled court files given his job description, and even clarified that the Respondent's personnel who handled the file could easily be revealed from the movement register.
10. The Claimant avers that on 14th July, 2020, he received a letter dated 7th July, 2020 referenced "Suspension: Disappearance of court file Criminal Case No. 1049 of 2015". He states that the committee recommended that he be suspended from duty on account of gross misconduct with effect from 7th July, 2020 until the disciplinary case against him is finalized. He avers further that he was advised that he was entitled to an alimentary allowance equivalent to 1/3 of his basic monthly salary.
11. It is his case that on 6th August, 2020, he received a letter of even date inviting him to a disciplinary hearing that was slated for Monday 24th August, 2020. He states that he was denied documents that he wished to rely on in his defence, and which the Respondent relied upon in its case against the Claimant such as the investigation report from the DCI.
12. The Claimant avers that the disciplinary hearing was a sham with a pre-determined verdict to summarily dismiss him in utter breach of his statutory rights and rules of natural justice.
13. It is his case that on 12th January 2021, he received a letter dated 4th January, 2021 dismissing him summarily from the service of the Respondent, and informing him of his right of appeal to the Judicial Service Commission within six (6) weeks from the date of the dismissal.



14. The Claimant avers that being dissatisfied with the outcome of the disciplinary process, he appealed vide a letter dated 3rd February, 2021 wherein, he listed the grounds of his appeal. It is his assertion that he was never invited for the hearing of his appeal, but that on 7th September 2022, he received a letter dated 28th June 2021, dismissing his appeal.
15. On cross-exam, the Claimant confirmed that he was advised to attend the disciplinary hearing with a representative, but did not present one. He further testified that he was informed of the investigation carried by DCI, and that he had communication with the DCI during the investigation.
16. On further cross-exam, the Claimant admitted knowing one George Abuto, the accused person in the lost court file, and further admitted lying to the police/investigators that he did not know him.
17. It is his testimony that he was the only employee of the judiciary present at the court registry in the period the file is said to have been lost having been charged with supervising the painting of the court registry over the said period.
18. The Claimant prays that his claim be allowed and he be awarded the costs of the suit.

The Respondent's Case

19. The Respondent's case is that the Claimant was appointed by the Commission (Respondent) vide a letter of offer of appointment for the post of Storekeeper II dated 26th November 2012, and that as at the time of his dismissal he served in the post of Supply Chain Management Assistant I (formerly known as storekeeper I).
20. It is the Respondent's case that on 22nd August 2018, the Senior Principal Magistrate, Winam Law Courts reported to the Chief Registrar of the Judiciary that following the disappearance of Sexual Offences Criminal Court File No. 1049 of 2015 Republic vs. George Otieno Abuto, the Head of Station lodged a complaint with the police, and that a preliminary report was generated following the investigations conducted by the Directorate of Criminal Investigations Kisumu, which revealed that the Claimant was involved in the disappearance of the said court file.
21. The Respondent states that the preliminary report recommended that the Claimant be charged with the offences of stealing by persons in the public service contrary to Section 80 of the Penal Code, destroying evidence contrary to Section 116 of the Penal Code, and that together with Felix Okinyi and George Abuto, the Claimant be charged with conspiracy to defeat justice contrary to Section 117(c) of the Penal Code.
22. It is stated that as at the time the report was made to the Judiciary, the recommendations were awaiting consent from the Office of the Director of Public Prosecutions for prosecution.
23. The Respondent's further case is that in view of the findings and recommendation in the preliminary report by the DCI-Kisumu, the Chief Registrar of the Judiciary through the Senior Principal Magistrate Winam Law Courts, issued and caused to be served upon the Claimant a notice to show cause letter dated 25th September 2019, informing the Claimant of the charges against him, and asking him to show cause why disciplinary action should not be taken against him.
24. It is the Respondent's case that the Claimant was interdicted from duty effective the date of the letter pending the conclusion of his disciplinary case, and further informed that during the period, he would be entitled to receive half of his salary.



25. The Respondent states that the Claimant responded to the notice to show cause through a letter dated 8th October 2019, denying any involvement in the disappearance of Criminal Court File No. 1049 of 2015 Republic vs. George Otieno Abuto.
26. It states further that the Human Resource Management Advisory Committee (HRMAC) deliberated on the Claimant's case on 28th May 2020 and 25th June 2020, wherein, it was observed that the DCI Kisumu investigations confirmed that there was communication between the Claimant and the Accused Person in Criminal Court File No. 1049 of 2015, and that although he was not charged as recommended in the preliminary report, there was mis-behaviour on the part of the Claimant.
27. It states that from the finding aforesaid, it was found necessary to review the Claimant's interdiction to suspension following completion of investigations on the matter, and that the Claimant was informed of the outcome of the HRMAC deliberation vide a letter dated 7th July 2020 informing him that he was directly responsible for the disappearance of Criminal Court File, and that he would be suspended from duty on account of gross misconduct with effect from the date of the letter until his disciplinary case is concluded.
28. It is the Respondent's case that the Claimant received half of his salary during the period of interdiction, and further received 1/3 during the suspension period.
29. The Respondent states that it resolved to subject the Claimant to disciplinary action and was invited for a hearing, which the Claimant attended virtually 24th August 2020. It states that the charges preferred against him were read out to him and he was accorded an opportunity to defend himself before the disciplinary committee, and thereafter, the committee resolved that the Claimant be dismissed from service with effect from 25th September 2019 on account of gross misconduct.
30. It is the Respondent's position that in its meeting held on 10th December 2020, it considered the Claimant's case and approved the recommendation by the successive committees to dismiss the Claimant from service. It states further that the decision was conveyed to him vide a letter dated 4th January 2021, which also informed him of his right of appeal within a period of six weeks from the date of the letter.
31. The Respondent states that it disallowed the Claimant's appeal against the dismissal since he failed to advance sufficient grounds to sustain the appeal. It states further that it was not necessary and neither is it a requirement to conduct an oral hearing of the appeal.
32. It is the Respondent's case that it considered the appeal by examining the contents of the Claimant's letter dated 3rd February 2021 and the substantive appeal of even date, and that the same did not advance sufficient grounds to warrant a change in the outcome, hence the appeal could not be upheld.
33. The Respondent's witness told court on cross-examination that the Claimant was not issued with the investigation report done by the DCI and further argue that he did not ask to be supplied with the report.
34. It is the witness' testimony that the Claimant was aware of the investigation, was involved in it and knew that the report thereof would be used in his case.
35. It is the witness' evidence that he did not know whether the Claimant handled the lost file at any stage.
36. The Respondent prays that the Claimant's case lacks merit and seek that it be dismissed with costs.



The Claimant's Submissions

37. It is the Claimant's submission that the alleged phone calls between the him and George Abuto have not been thoroughly investigated. He submits that the call logs between them were never availed during the disciplinary hearing nor in the instant suit, thus violating the principle of the best primary evidence as was held by the Court of Appeal in the case of *Airtel Networks (Kenya Limited) versus Anthony Kelly Muema*; Civil Appeal no. 50 of 2018.
38. The Claimant submits further that exclusive reliance was placed on the investigation conducted by the DCI-Kondele, when the Respondent acknowledged that in cases where a disciplinary matter involving an employee also carries criminal implications, it is necessary to conduct two separate investigations concurrently- one by the DCI and another internally.
39. It is the Claimant's submission that the Respondent lacked sufficient justification to terminate his employment. He submits that he was unable to adequately refute or defend himself against unsupported allegations since he was not provided with the DCI Kondele's investigation report for his defense, despite the Respondent having possession of the report.
40. It is his contention that the Respondent's handling of the situation was unjust and appeared to unfairly target the Claimant, whose role as a storekeeper did not involve file management. He placed reliance in the case of *Anthony Mkala Chitavi v Malindi Water and Sewerage Company Limited* [2013] eKLR to buttress this position.
41. He submits that the lack of disclosure not only undermined the requirements of third schedule, Part IV, Section 25(5) of the Judicial Service Commission Act, but it also undermines his ability to prepare his defense adequately. It is his submission that the Respondent's actions violated procedural fairness guidelines, as outlined in the case of *Rebecca Ann Maina & 2 Others v Jomo Kenyatta University of Agriculture and Technology* (2014) eKLR where Lady Justice Ndolo emphasized the importance of ensuring fairness in the following words:-

“I agree with Counsel for the Respondent that internal disciplinary proceedings are non-judicial in nature. However, in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defense. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”
42. The Claimant submits that the disciplinary hearing was a mere charade designed to deceive him into believing that proper procedures were followed, whilst his defence was disregarded throughout the proceedings.
43. It is his submission that the Respondent's decision to only pay him 1/3 of his salary was not only in violation of the Judicial Service Commission Act, but also the guidelines set forth in the Judiciary Human Resource Policies and Procedures Manual.
44. It is submitted that in light of the unjust termination of the Claimant's employment, he is eligible for the remedies outlined in Section 49 of the *Employment Act*, specifically Section 49(1) which aligns with the reliefs sought by the Claimant.



The Respondent's Submissions

45. It is the Respondent's submission that at the conclusion of the disciplinary proceedings, it genuinely believed that the Claimant was culpable for the disappearance of the file based firstly on the fact that he had the motive to cause the file to disappear from the Court registry as evidenced by the constant communication between him and Mr. George Abuto the accused; he had the time and opportunity to cause the file to disappear having admitted in the investigation report that he had the keys to the registry during the weekend of 23rd June 2017 to 26th June 2017; he outrightly lied that he did not know the accused person in the missing court file both to the police and the disciplinary committee and only came clean when faced with the indisputable evidence that he and the accused had been in constant communication during the period when the court file disappeared, and lastly, of all the 27 staff interviewed and investigated, only the Claimant had a direct contact with the accused person, whose file disappeared.
46. The Respondent submits that it reasonably believed that the Claimant was culpable for the disappearance of the court file. It sought to rely in the case of *Thomas Sila Nzivo v Bamburi Cement Limited* [2014] eKLR to support this position.
47. The Respondent submits that the Claimant was accorded a fair procedure as it fulfilled and went beyond the minimum requirements under Section 41 of the *Employment Act*. It submits that the process was commenced by issuance of a notice to show cause letter dated 25th September 2019 which stated the charge and particulars of the charge, he responded to the show cause, was invited to a disciplinary hearing and informed of his right of appeal, and his appeal was determined.
48. The Respondent submits that during the hearing, it actively sought to know the reason why the Claimant was not accompanied by a fellow employee and that the Claimant gave his explanation as to why he could not find another judicial staff to support him during the disciplinary hearing. It submits further that the fact that the Claimant could not find a suitable employee willing to accompany him during the hearing cannot be the fault of the Respondent.
49. It is further submitted that the requirement to be accompanied by a representative who must be a judicial staff is well established in law. The Respondent seeks refuge in the sentiments of Rika J in *Ratemo v Kenya Film Commission & another* (Cause 2192 of 2012) [2014] KEIC 3 (KLR) (3 February 2014) (Ruling) to buttress this position.
50. On the Claimant's assertion that he was not availed the DCI report to allow him properly prepare his defence, the Respondent submits that the Claimant was aware of the contents of the investigation report as he was involved in the investigations at multiple instances and informed of the findings later through the show cause letter, that he admitted during cross-examination that he was informed of the contents of the report by the DCI Kisumu, and lastly that the notice to show cause letter sufficiently laid out the charge and the particulars of the charge which allowed the Claimant to prepare his defence adequately as shown in the response to the notice to show cause letter dated 9th October 2019.
51. It is its submission that the Claimant during cross examination told court that he received the investigation report around 2019 after the interdiction letter was issued. It submits that the disciplinary hearing occurred in August 2020, meaning that the Claimant had the investigation report before the hearing date or that he knew the contents of the investigation report and was in no way prejudiced during the disciplinary hearing or impeded in advancing his hearing. The Respondent had reliance in *Wilson Mutabari Mworira v Barclays Bank of Kenya Limited* [2021] KEELRC 541 (KLR) to support its assertion.



52. It is the Respondent's submission that it has established in the that the Claimant's termination was proper and lawful and consequently, he is not entitled to any payment as compensation for unlawful termination of employment.
53. The Respondent finally urges the Court to find that the Claimant was accorded an above-board process, which was procedurally fair.
54. The Respondent stakes its entitlement of costs on account of the claim being unmerited.

Analysis and Determination _____

55. Upon a careful appraisal of the pleadings, the evidence adduced, witnesses' testimonies and the parties' written submissions, the following issues arise for determination:-
 - a. Whether the Claimant's was unfairly dismissed
 - b. Whether the Claimant is entitled to the remedies sought.

Whether the Claimant was unfairly dismissed

56. To determine whether or not a dismissal is fair, the role of the court is to consider whether the employer/Respondent, adhered to the twin question of procedure and the substantive fairness tests espoused in Sections 41, 43, 45 and 47 of the *Employment Act*, 2007.
57. On procedural fairness, Section 41 of the *Employment Act* states:

“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.”
58. The Claimant herein, was evidently issued with a notice to show cause letter requiring him to show cause why disciplinary action should not be taken against him. It is also not disputed that he did response to the show cause letter, and which response was considered by the HRMAC of the Respondent. It is similarly admitted by the Claimant's own testimony that he was invited for a virtual disciplinary hearing where he pleaded his defence before the disciplinary committee, and thereafter informed of his right of appeal, and which right he admitted exercising.
26. The Court of Appeal in *Postal Corporation of Kenya v Andrew K.Tanui* [2019] KECA 489 (KLR) spelt out what has come to be known as the minimum standards of a fair procedure 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.”



59. From the foregoing minimum standards, it is not disputed that the Claimant was not represented at the disciplinary hearing. The Claimant's evidence is that he was advised to attend the hearing accompanied by a representative, being either a fellow employee or a shop floor steward. His case is that he could not get a fellow employee to represent him, hence his appearance unaccompanied.
60. Although the *Judicial Service Act* require that an accused person is represented by an Advocate, it is clear that this only holds when the person going through disciplinary hearing has been charged with a criminal offence. The Claimant herein, though found culpable, was not criminally charged as to warrant representation by an Advocate.
61. It then follows that the Claimant cannot fault the employer/Respondent, having been informed of his right to be represented, and when it is him that could not find a representative. The Claimant cannot therefore be heard to say the process was unfair solely on this basis.
62. In *Philip Kimosop v Kingdom Bank Limited (2022) eKLR*, the Court held that the Respondent's action of serving a show cause letter to the Claimant, inviting the Claimant to an oral hearing, giving the Claimant the right to call witnesses, produce documents and also be represented by another employee at the hearing, constituted fair procedure. The Court emphasized that all these steps taken by the Respondent prior to terminating the Claimant's employment qualified as following due procedure as contemplated by Section 41 of the *Employment Act*.
63. The Claimant similarly faulted the procedure of his dismissal on the basis that he was not supplied with the DCI report that was heavily relied on in arriving at the decision to dismiss him from service. The Respondent's position is that the Claimant was involved in the investigation process and was aware of the outcome of the investigation, and that the show cause issued to him was comprehensive on the charges levelled against him and could thus not purport that his defence was prejudiced by reason that he was not given the report.
64. During cross-examination, and as was correctly submitted by the Respondent, the Claimant admitted that he obtained the investigation report in 2019, prior to the disciplinary hearing that took place in the year 2020. It is also his evidence that the show cause letter which he responded to, carried all the charges against him, which charges were similar from the point of issuance of show cause, suspension letter all through to the letter of summary dismissal.
65. In the case of *Wilson Mutabari Mworira v Barclays Bank of Kenya Limited [2021] KEELRC 541 (KLR)*, the court had this to say on sufficiency of the charges against an employee:-
- “To my mind, what is important in determining the fairness of a disciplinary process is the sufficiency and detail of the charge against an employee. Hence, the test should be whether an employee has been sufficiently informed of the allegations he or she is facing.”
66. Indeed, the Claimant admitted being fully aware of the charges against him and having responded to those charges both in written and verbally in a physical hearing. In the circumstances, the Claimant having been clear on what the charges levelled against him were, and even admitting obtaining the DCI report before the hearing, it matters not that the report was not directly given to him by the Respondent. What matters, is he knew what he was to answer to and answered he did.
67. In light of the foregoing, I find and hold that the dismissal of the Claimant met the procedural fairness test.



68. On the substantive fairness of the dismissal, the question is whether the reasons for the Claimant's dismissal are matters the Respondent believed to exist at the time of dismissal, and which constituted reasonable ground to dismiss.
69. Section 43 of the *Employment Act* states:-
- “(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”
70. In *British Leyland UK Ltd v Swift* (1981) I.R.L.R 91, Lord Denning described the test of reasonableness thus:-
- “The correct test is; was it reasonable for the employers to dismiss him” If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him.”
71. The Respondent's case is that on 22nd August 2018, the Senior Principal Magistrate, Winam Law Courts reported to the Chief Registrar of the Judiciary the disappearance of a Sexual Offences Criminal Court File No. 1049 of 2015 Republic vs. George Otieno Abuto, and that an investigation conducted by the Directorate of Criminal Investigations- Kisumu, in relation to the lost file, revealed that the Claimant was involved in the disappearance of the said court file.
72. The court was told that a forensic data analysis of the communication between the Claimant and Mr. George Abuto the accuse person in the lost file, found that during the period between 23rd June 2017 and 26th June 2017, the Claimant and Mr. George were in constant communication and thereafter, communication ceased. The report confirms that the forensic data analysis indicated that the Claimant and the said Mr. George were in the same location in Kisumu North on 24th June 2017. The DCI further noted that the Claimant had lied that after leaving the premises at 17:30 p.m. he went straight to his home in Maseno, yet the signal placed him together with Mr. George at the same location after they had communicated.
73. This period is also the time when the court registry was being painted under the Claimant's supervision. The Claimant confirmed that during the period of 23rd June 2017 and 26th June 2017, he was the only staff within the judiciary compound.
74. On cross-examination, the Claimant admitted knowing the accused person in the file said to have been lost. He further admitted having lied to the police during investigations that he did not know the accused person named George Abuto, ostensibly for fear of what the investigators/police would have done.



75. In *Galgalo Jarso Jillo v Agricultural Finance Corporation* {2021} eKLR the court has this to say on substantive fairness:-

“In terms of section 43 of the *Employment Act*, an employer will be deemed to have a substantive justification for terminating a contract of service if he/she genuinely believed that the matters that informed the decision to terminate existed at the time the decision was taken. In other words, it is not a requirement of the law that the substantive ground informing the decision to terminate must in fact be in existence. All that is required is for the employer to have a reasonable basis for genuinely believing that the ground exists even if it later turns out that it, in fact, did not. In my view, what the law is concerned with here is whether the circumstances surrounding the decision to terminate would justify a reasonable man on the street, standing in the same position as the employer, to reach a similar decision as him/her regarding the termination.”

76. Further, the Court of Appeal in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* {2019} eKLR, commenting on the question of substantive justification stated:-

“The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it "genuinely believed to exist," causing it to terminate the employee's services.”

77. Aiding disappearance of a court file is a gross malpractice that cannot be tolerated and/or condoned. It is not an issue that the court would expect the Respondent to take lightly. Further, what the Claimant was going through was simply an administrative disciplinary process whose burden of proof is on a balance of probability. By his admission that he knew the accused person; admitting that he lied to the police/investigators about knowing the accused; his constant communication with the accused person around the period the file was lost all point on a balance of probability to culpability on the part of the Claimant for the disappearance of the court file.

78. In the premise, I reach the conclusion that the Respondent was justified to believe that the Claimant was responsible for the disappearance of Sexual Offences Criminal Court File No. 1049 of 2015 Republic vs. George Otieno Abuto, with the result that the reasons for his dismissal were reasonable, justified, hence fair.

79. In the end, I conclude that the Claimant's dismissal meets both the procedural and the substantive fairness tests, rendering the dismissal fair and lawful.

Whether the Claimant is entitled to the prayers sought

80. The Claimant sought a declaration that his dismissal was unfair for failing to comply with rules of natural justice and the mandatory provisions of the *Employment Act* 2007 and *the Constitution* of Kenya 2010. With the finding of a fair and lawful dismissal, this claim fails and is dismissed.

The unlawfully withheld 2/3 of the salary from 7/7/2020 to date.

81. The evidence before court, indicates that the Claimant was paid half salary while on interdiction and an alimentary allowance (1/3 of his salary) in accordance with the Respondent's Human Resources Policy on being placed on suspension.

82. The Claimant is thus not owed any dues on this account and the claim similarly fails.



Reinstatement without loss of benefit

83. The claim of reinstatement similarly falls on the finding of a fair and lawful dismissal.

Certificate of Service

84. An employee is by law entitled to be issued with a certificate of service irrespective of the reason for separation with the employer. The Claimant is thus entitled to a certificate of service and the Respondent is ordered to issue him one within 21 days of this order.

85. In whole, the Claimant's Memorandum of Claim dated 14th June, 2023, is found to lack merit and is dismissed with costs to the Respondent.

86. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5TH DAY OF DECEMBER, 2024.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Raburu h/b for Mr. M. M. Omondi for the Claimant

Mr. Too h/b for Mr. Mwangi for the Respondent

Ms. Esther S- C/A

