



**Kiplimo v Communications Authority of Kenya (Petition  
E104 of 2021) [2023] KEELRC 588 (KLR) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 588 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E104 OF 2021**

**J RIKA, J**

**MARCH 3, 2023**

**IN THE MATTER OF: VIOLATION/INFRINGEMENT  
OF FUNDAMENTAL RIGHTS OF THE**

**PETITIONER;**

**AND,**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA [PROTECTION OF RIGHTS AND  
FREEDOMS] PRACTICE AND PROCEDURE RULES, 2013;**

**AND**

**IN THE MATTERS OF: THE PUBLIC SERVICE  
ACT, 2017, THE EMPLOYMENT ACT, 2007, AND**

**THE COMMUNICATIONS AUTHORITY OF KENYA HUMAN RESOURCE MANUAL;**

**BETWEEN**

**TIMOTHY KIPLIMO ..... PETITIONER**

**AND**

**COMMUNICATIONS AUTHORITY OF KENYA ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed his petition on July 1, 2021.
2. He states that he was employed by the respondent's State Corporation, as a Finance Officer, on January 16, 2016.
3. He was suspended by the respondent's on October 22, 2019. He was informed by the Director-General, that cash reconciliation which was being carried out, had established that the petitioner was not able to account for Kshs 3,316,379.



4. He was suspended to pave way for further investigations, under the respondents's Human Resource Policy Section IX subsection 3.8.2.3.
5. He was issued letter to show cause dated December 31, 2019, over the same allegations, but with the cash variance quoted at Kshs 3,819,715, different from the amount stated in the letter of suspension.
6. He replied through his letter dated January 3, 2020, denying the allegations. He was invited for a disciplinary hearing before the respondents's ad hoc committee, on February 20, 2020.
7. He was heard. The committee recommended on March 11, 2020, that the claimant is placed on interdiction, and further investigations on the allegations be carried out.
8. There was no further communication to the petitioner on the status of the investigations. On August 11, 2020, he was issued a letter of summary dismissal. He appealed in accordance with the Human Resource Policy Manual, 2015. He was not heard on appeal. His last salary was at the monthly rate of Kshs 115, 350.
9. The petitioner wrote a demand letter before filing the Petition on June 16, 2021. The respondents did not reply, but on June 18, 2021, issued the petitioner a notice, to vacate the respondents's residential house at CA Village, House Number B5, by June 30, 2021.
10. He submits that the respondents acted in flagrant breach of articles 25[c], 41, 43, 47 and 232 of the Constitution. He prays for orders that: -
  - a. Declaration that the summary dismissal process commenced by the respondents against the petitioner was irregular, illegal, unconstitutional and null and void *ab initio*.
  - b. The internal process as commenced by the respondents be declared unconstitutional and the petitioner be reinstated to his position, complete with rights and benefits applicable to his employment before the impugned internal process was commenced.
  - c. Declaration that the summary dismissal of the petitioner is unlawful, unjustified, unconstitutional, incompetent, ultra vires, illegal, irregular, null and void.
  - d. An order of injunction, restraining the respondents, its agents, functionaries or officers by whatever name called, from interfering with the petitioner's occupation, evicting, removing, and /or actualizing eviction of the petitioner from CA Village House Number B5 within the staff quarters of the respondents, and without the requisite or reasonable notice and justifiable cause.
  - e. The honourable court do invoke and grant suitable orders in the circumstances within the ambit of article 23[1] & 3 of the Constitution of Kenya, 2010.
  - f. Costs to the petitioner.
11. The prayers above appear to the court repetitious, particularly the first 3 declaratory orders. There is no need in pleading, to repeat prayers. Repetition has the effect of blurring the form of assistance sought from the court.
12. The petition is based on the petitioner's verifying affidavit, supporting affidavit, witness statement and facts of the petition, all dated June 30, 2021. The petitioner also relies on 25 documents, contained in a List dated June 30, 2021.



13. Juma Kiprono Kandie, the respondents's Director, Human Resource Capital and Administration, filed a replying affidavit sworn on December 10, 2021. He states that the prayer on eviction is spent, the petitioner having left the respondents's residential premises.
14. It is conceded that the petitioner was employed by the respondents on January 14, 2016, initially as an Accounts Officer II. In the year 2019, the respondents carried out a data validation exercise for the ERP system, to ensure that the uploaded and captured data was complete and accurate, as at June 30, 2019. The sum of Kshs 3,316,379 was unaccounted for.
15. The respondents wrote to the petitioner on October 7, 2019 through its Director Finance and Accounts, asking the claimant to account for the shortfalls. The claimant did not reply, to explain the query.
16. He instead deposited the sum of Kshs 380,752 to the respondents's Bank Account on October 10, 2019. Further, he wrote to the Communications Sacco asking the Sacco to transfer Kshs 1,680,000 to the respondents's Bank Account.
17. The petitioner was suspended to pave way for investigations. He was advised on the reasons for suspension. The respondents explained that suspension was in accordance with section 3.8.2.3. of the respondents's Human Resource Policy, which states that, " An employee should be suspended from duty when involved in serious offence of gross negligence of duty, dishonesty, occasioning loss of official funds or property and dismissal action is considered appropriate."
18. He was issued a letter to show cause why disciplinary action should not be taken against him, dated December 31, 2019. He was heard on February 20, 2020. It was recommended among other things, that the petitioner's suspension is replaced with interdiction, in line with section 3.7 of the Human Resource Policy. The respondents acted on the recommendation, placing the petitioner on interdiction.
19. Upon conducting further investigations, the respondents made a decision to summarily dismiss the petitioner, through a letter dated August 11, 2020. Reasons for the decision were given.
20. He appealed on September 8, 2020. The appeal was pending hearing and determination, when the petitioner filed this petition.
21. The respondents conducted the whole process with utmost integrity in accordance with the Constitution of Kenya, the Fair Administrative Action Act, the Employment Act, the Kenya Information and Communications Act, and the respondents's Human Resource Policy. The respondents urges the court to find that the petition has no merit, and dismiss the petition with costs to the respondents.
22. It was agreed by the parties that the petition is considered and determined on the strength of the affidavits, documents, pleadings and submissions on record. It was confirmed at the last mention on October 4, 2022, that submissions were filed and exchanged.
23. The petitioner restated the facts as pleaded by the respective parties, in his submissions on record, a copy of which appears to be undated. He underscored the Constitutional and Statutory provisions, mentioned elsewhere in this Judgment, in submitting that the respondents violated his fundamental rights, statutory protections and guarantees, by summarily dismissing him. He invoked 2 decisions of the E&LRC in Mary Chemweno Kiptui v Kenya Pipeline Company Limited [citation not given] and E&LRC Cause No 74 of 2013, Kenya Union of Commercial Food & Allied Workers Union v North Farmers Sacco Limited, to underscore the requirements of Sections 41, 43 and 45 of the Employment Act, on fair procedure, and fair and valid reason or reasons to justify termination.



24. The respondents similarly restated the facts as borne out in the Affidavit of Juma Kiprono Kandie, in its submissions dated October 18, 2022. It is submitted that the respondents followed fair procedure, and had valid ground, to summarily dismiss the petitioner. The respondents amplified the requirements of section 41, 43 and 45 of the *Employment Act*, invoking the decisions of the E&LRC in *Walter Ogal Anuro v Teachers Service Commission* [2013] e-KLR and *Janet Nyandiko v Kenya Commercial Bank Limited* [2017] e-KLR.
25. The issues as identified by the parties are, whether the petitioner's contract was unfairly and unlawfully terminated; whether his Constitutional rights were violated; whether he is entitled to the orders sought.

**The Court Finds: -**

26. The petitioner was employed by the respondents State Corporation as Accountant II, working at the cash office. He was employed on January 14, 2016.
27. He was summarily dismissed on August 11, 2020. The letter explains that the claimant was not able to account for Kshs 3,819, 715, and that failure to account was a grave offence under the respondents's Human Resource Policy.
28. Procedure: The claimant was suspended on account of cash misappropriation, on October 22, 2019. The amount in question was stated to be Kshs 3,316,379, which is different from the amount stated in the letter of dismissal, at Kshs 3,819,715.
29. He was issued a letter to show cause why disciplinary action should be taken against him, dated December 31, 2018. The petitioner replied on January 3, 2020.
30. On February 5, 2020, he was invited for disciplinary hearing before an ad hoc committee, which convened on February 20, 2020. The petitioner was heard, and recommendations made. It was recommended that the suspension of the petitioner should be replaced with interdiction with half-pay, backdated from the date of suspension. The committee recommended further that forensic audit be carried out, to determine the actual amounts lost on unaccounted. The minutes of the ad hoc committee were signed by the 6 members, on March 5, 2020.
31. But it was not until August 11, 2020, that the respondents summarily dismissed the petitioner. The letter of summary dismissal does not state what action was taken by the respondents, from the date the ad hoc committee, made its recommendations. Was the Forensic audit carried out and did it involve the petitioner?
32. The respondents does not appear to have involved the petitioner with any investigations post-dating the Ad hoc committee recommendations. The petitioner was advised by the respondents, on being placed under interdiction on March 11, 2020, that suspension had been reduced to interdiction, "while investigations are going on." When did the investigations conclude, and did the respondents involve the petitioner with the Investigations? Was he availed a report of the Investigations, before dismissal?
33. The petitioner submits correctly that under section 72 [1] of the *Public Service Commission Act*, 2017, "an officer who has been interdicted or suspended may, in writing request the authorized officer to communicate the progress and action taken, towards the conclusion of the disciplinary process." The petitioner requested to be appraised by the respondents about the investigations carried out during his interdiction. No information was provided.
34. The letter of summary dismissal dated August 11, 2020, did not issue against the background of any forensic report, shared with the petitioner. The variance between the amount of Kshs 3,316,379 in the



- letter of suspension and Kshs 3,819, 715 in the letter of summary dismissal, was not explained through the recommended forensic audit.
35. The petitioner complains about delay in concluding the disciplinary process. The ad hoc committee expressed the same concern on delay, stating that “where suspension is employed as a mechanism to facilitate investigations, the same should be completed within the shortest time possible and appropriate action taken especially where suspension is accompanied with the withholding of salary.”
  36. The petitioner lodged an appeal on September 8, 2020, and by the time he filed this petition on July 1, 2021, almost a year down the line, the appeal had not been heard, or any form of response communicated to the petitioner.
  37. The explanation by Director, Human Capital and Administration that the petitioner’s appeal was pending hearing and determination by the time the petition was presented, lacks merit. Why would an internal appeal, presented in September 2020, be pending in July 2021? The respondents compounded delay which the petitioner had already suffered, from the date of suspension in October 2019 to March 2020 when the ad hoc committee made its recommendations.
  38. Section 5.2.1 of the respondents’s Human Resource Policy, requires that an employee who makes an appeal, shall be required to appear before the appeals committee. An appeal against dismissal shall be lodged within 30 days of dismissal. The result of an appeal under section 5.7, will be conveyed to the employee within 30 days from the receipt of the appeal.
  39. There were numerous procedural missteps. The court is satisfied that procedure was not fair, in accordance with section 41 and 45 of the Employment Act, as well as the respondents’s Human Resource Policy.
  40. Validity of reason[s]: The reason justifying summary dismissal as stated in the letters of suspension and dismissal, was the petitioner’s misappropriation of cash which belonged to his employer, the respondents herein.
  41. Although the amount was differently stated at Kshs 3,316,379 in the letter of suspension and Kshs 3,819, 715 in the letter of summary dismissal, the court does not think that this variance had effect on the offence of gross misconduct, over which the claimant was dismissed.
  42. He was an accountant. He described himself as a Finance Officer. He was noted by the ad hoc committee to have been the main cashier. When he was requested by his supervisor Joseph Kimanga [Director Finance] to give an explanation for the deficits, the petitioner deposited Kshs 318,752 to the respondents’s Bank Account. He at the same time, wrote to the communications sacco requesting the sacco to transfer Kshs 1.68 million to the respondents’s bank account.
  43. The petitioner sought to redress a wrong he had committed against his employer. He in the view of the court, corroborated the position of the respondents, that he was engaged in financial impropriety, against his employer. He would not be rushing to credit his Employer’s Bank Account with huge amounts of money, if his hands were clean. His explanation before the ad hoc committee, that he was compelled by the Director Finance to make/ propose deposits in favour of the respondents, was not persuasive. There was no evidence from the petitioner establishing that he acted on the advice of the Director Finance. He did not suggest that the money he deposited was a contribution from the Finance Director, or that the proposed sacco facility was to be taken with the participation of the Finance Director. It was the petitioner’s money, that he deposited in his Employer’s Bank Account. He conceded liability, by his choice to refund the respondents part of the misappropriated cash.
  44. Termination was based on fair and valid reason[s] under sections 43 and 45 of the Employment Act.



45. Remedies: The prayer relating to eviction of the petitioner from the respondents's residential premises, has been overtaken by events, the petitioner having moved out of the house.
46. There are 3 declaratory orders sought under paragraph a, b and c of the prayers to the petition, but as pointed out at the outset, the orders are similar or repetitious orders, worded slightly differently.
47. It is sufficient to declare that termination was unfair on account of procedure.
48. The remedy of reinstatement is not available to the petitioner, having misappropriated respondents's finances, and acknowledged misappropriation, through his arrangement for refund. He damaged the cornerstone elements in employer-employee relationships, of trust and confidence. It would not be reasonable to impose him upon an Employer whose trust and confidence he irrevocably damaged.
49. There were no constitutional violations involved. The violations the petitioner complains about, are contractual and statutory violations, which can be addressed through recourse to the Employment Act and the Human Resource Manual. There are no complex issues, calling in the aid of the Constitution.
50. He worked for 4 years and approximately 7 months. He contributed largely to the circumstances leading to his dismissal. He misappropriated public funds. His dismissal was based on valid ground, but unfair procedure. He is granted equivalent of 4 ½ months' salary in compensation for unfair termination at Kshs 519,075.
51. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 3<sup>RD</sup> DAY MARCH OF 2023.**

**JAMES RIKA**

**JUDGE**

