



**Kamau v Nairobi City County & another (Cause 1108 of 2015)
[2023] KEELRC 1571 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1571 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1108 OF 2015**

**J RIKA, J
JUNE 30, 2023**

BETWEEN

NANCY W. KAMAU CLAIMANT

AND

NAIROBI CITY COUNTY 1ST RESPONDENT

NAIROBI CITY COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

JUDGMENT

1. The Claimant filed her Amended Statement of Claim on 14th October 2019.
2. She states that, she was employed by Nairobi City Council, 1st Respondent's precursor, as a Constable, in the City Inspectorate Department. She rose through the ranks, to the position of Superintendent.
3. She was arrested on 14th March 2008, and charged under the *Anti-Corruption and Economic Crimes Act* at the Chief Magistrate's Court, and acquitted.
4. Despite being acquitted, the Respondents terminated her contract.
5. She earned a gross monthly salary of ksh 37,275.
6. She states that she suffered loss of salary and allowances, amounting to ksh 4,399,527. She further claims 1-month salary in lieu of notice at ksh 83,630, and equivalent of 12 months' salary at ksh 1,003,560. The total sum claimed is ksh 5,486,717.
7. Other prayers are: declaration that termination was unfair and unlawful; declaration that she is entitled to terminal dues and compensatory damages as pleaded; certificate of service to issue; costs; interest; and any other relief.
8. The 1st Respondent filed an Amended Statement of Response, amended on 24th February 2022. It is conceded that the Claimant was employed by the Nairobi City Council, the 1st Respondent's



precursor. She was charged in the Chief Magistrate's Court at Nairobi as pleaded. She was convicted and ordered to pay a fine of ksh 206,000, or serve a prison term of 12 months. She successfully appealed at the High Court. The Appeal was allowed on technicality. She was dismissed effective June 2014, under the Public Service Commission [Local Authority Officers Regulations, 2007]. She was not exonerated on appeal. Appeal was allowed on the basis of technical omission on the part of the prosecution.

9. She does not merit terminal benefits and damages.
10. Her salary as at July 2007 was scale 9, ksh 21,040 – ksh 30,595 monthly. Her entry point and future incremental date was to be determined in accordance with her terms and conditions of service. Her basic salary as at December 2008 was ksh 12,265 and house allowance at ksh 12,750. She does not specify when salary and allowances pleaded as special damages, were incurred. Her monthly salary was not ksh 83,630 at the time of termination.
11. The 1st Respondent states that it had valid reason to justify termination, the Claimant having been convicted at the Chief Magistrate's Court. She was issued a notice to show cause, given a hearing, and afforded an opportunity to appeal. Termination was based on valid reason, and was fairly executed.
12. Parties agreed to have the 2nd Respondent joined to the Claim, on 21st June 2022. The 2nd Respondent did not participate in the hearing, which took place on 7th February 2023. The hearing date was taken on 20th September 2022 by the Claimant's and the 1st Respondent's Advocates. The 1st Respondent, like the 2nd Respondent did not attend Court for the hearing.
13. The Claimant gave evidence and rested her case, on 7th February 2023. The Claim was last mentioned on 18th April 2023, when the Claimant and the 1st Respondent, confirmed filing and exchange of their Closing Submissions.
14. The Claimant adopted the contents of her Amended Statement of Claim, her Witness Statement and Documents on record, in her evidence. She restated that she was employed on 4th February 1991 as a City Askari. She was interdicted in 2008. She was a Superintendent at the time. She was arrested in March 2008 for assaulting City Officers. She was convicted. She appealed and was acquitted by the High Court. She wrote to the 1st Respondent in 2014, asking to be reinstated. She was instead issued a letter of summary dismissal. She was innocent. The High Court confirmed her innocence. She was earning a gross monthly salary of ksh 37,274. She was to retire at the age of 60 years. She was 37 years old on dismissal. She was not able to secure alternative employment.
15. The issues are whether, dismissal of the Claimant from service was fair; and whether she merits the prayers sought.

The Court Finds: -

16. The 1st Respondent's submission that the County Public Service Board, who was joined to the Claim belatedly, should be liable to compensate the Claimant, if the Claim is upheld has no merit. The letter of summary dismissal dated 26th June 2014, was issued by the 1st Respondent. The 1st Respondent issued the letter, in its capacity as the Claimant's Employer.
17. It is not disputed that the Claimant was employed by Nairobi City Council, the precursor of the 1st Respondent, as a City Constable on 4th April 1991. She was promoted to the position of Superintendent. She was charged on 14th March 2008, with an offence under the [Anti-Corruption and Economic Crimes Act](#), 2003, at the Chief Magistrate's Court, Milimani in Nairobi. She was convicted,



but successfully appealed against conviction at the High Court in Nairobi, Criminal Appeal no 66 & 216 of 2010.

18. The Judgment of the High Court, did not state that there was nothing to bar the prosecution, from reinstating the charges. The High Court was making reference to a decision from the Court of Appeal, where the Court of Appeal terminated flawed proceedings in the Magistracy, with a rider that there was nothing to bar the prosecution from charging the particular accused person afresh, subject to compliance with the provisions of the *Economic Crimes Act, 2003*.
19. The High Court stated concerning its own Appeal filed by the Claimant herein, that, “ In the case before me however, the trial in the Lower Court was concluded, and the Appellants convicted as set out in paragraph one of this Judgment, despite the flawed process. That being the matrix of this case, the Learned State Counsel, was prudent to concede the Appeals.”
20. The Judgment of the High Court did not therefore state anywhere, that the prosecution could reinstate the criminal case against the Claimant, as stated in the letter by the 1st Respondent’s County Secretary to the Claimant, dated 26th June 2014 conveying the decision of the Public Service Commission, to dismiss the Claimant with effect from 14th March 2008. The Claimant could not be prosecuted afresh, having been tried and convicted. There was a misapprehension of the Judgment of the High Court, by the County Secretary.
21. The Respondents also seem to have misapprehended the procedure on dismissal of a Public Officer who is charged with corruption, or economic crimes.
22. Section 62 of the *Anti-Corruption and Economic Crimes Act, 2003* provides that a Public or State Officer charged with corruption or economic crime, shall be suspended at half pay with effect from the date of the charge, until conclusion of the case.
23. Under Section 62[3], the Officer ceases to be suspended, if criminal proceedings are discontinued, or if he/she is acquitted. The Employer may suspend without pay, on the strength of any other written law.
24. Section 63, states that an Officer who is convicted of corruption or economic crime, and prefers an Appeal, shall be suspended without pay, from the date of conviction, pending the outcome of any Appeal.
25. Section 63[2], is clear that an Officer ceases to be suspended, if the conviction is overturned on Appeal.
26. The Claimant was interdicted with effect from 14th March 2008. The letter of interdiction specifically quoted Section 62[1] of the *Anti-Corruption and Economic Crimes Act*, which states that an Officer shall be suspended. The Claimant was suspended, effective 14th March 2008.
27. She was entitled to half-salary for the period of suspension.
28. Once convicted, she ceased to be entitled to the half salary. She would be on suspension without pay, until the Appeal was heard and determined.
29. Once acquitted on Appeal, suspension was automatically lifted, and the Claimant ought to have returned to work, with all benefits due to her, for the period from the date of suspension, fully restored.
30. There is no provision under the *Anti-Corruption and Economic Crimes Act*, once a Public Officer has been acquitted on Appeal, which allows an Employer to hold disciplinary proceedings, or appeal proceedings, on the same matters that have been dealt with on Appeal.



31. The Public Service Commission had no mandate, under the *Ant-Corruption and Economic Crimes Act*, to dismiss the Claimant after he was acquitted by the High Court. The Act is clear, under Section 63 [2], that, “The Public Officer ceases to be suspended, if the conviction is overturned on appeal.”
32. Although ordinarily, criminal proceedings do not affect the mandate of Employers to undertake disciplinary proceedings and sanction Employees, the position is different where criminal proceedings are joined at the hip by an Act of Parliament, with the underlying disciplinary process. The *Anti-Corruption and Economic Crimes Act*, joins the disciplinary process against Public Officers, with the criminal proceedings, right from suspension, to lifting of suspension, once an Appeal in the criminal process, is finalized. Lifting of suspension means the Public Officer’s contract of employment, is restored in full, without further processes by the Public Service Commission or other Public Service Employers. Otherwise it would not have been necessary, to tie down the process of disciplining the Claimant, to the criminal proceedings, from 2008 to 2013 when he was acquitted.
33. It was not intended that the Public Service Commission revisits the final Judgment of the Court. The Public Service Commission revisited the Judgment of the High Court, and ended up dismissing the Claimant, based on its flawed understanding of the Judgment.
34. The employment contract is restored in full, once suspension is lifted.
35. The Claimant has not established specific figures pleaded as arrears of salary and allowances. Her only salary pay slip on record is for December 2008. It shows her basic monthly salary, and house allowance at ksh 12,262 and 12,750 respectively. She was suspended on 14th March 2008, which would suggest that ksh 12,262 indicated as basic salary in December 2008, was her half monthly basic salary. Her gross monthly salary is correctly pleaded at ksh 37,275, as of the date she was suspended. Other figures pleaded are not supported by pay slips, or other pay statements.
36. She worked from 4th April 1991 to 14th March 2008 [as per dismissal letter]. She worked, in accordance with the Respondent’s computation of time, for 17 years. There were charges under the corruption and economic crimes regime, over which she was tried, convicted and finally acquitted on Appeal. She was 37 years and expected to retire after 23 years, at the age of 60 years. Having been acquitted on Appeal, her way back to service was cleared, but the Respondents placed unwarranted barriers, through disciplinary and appeal proceedings, leading to dismissal.
37. She is granted compensation for unfair termination, equivalent of 12 months’ salary, based her last monthly rate of ksh 37,525, at ksh 450,300.
38. She is granted 1-month salary in lieu of notice at ksh 37,525.
39. The Claimant did not avail to the Court a copy of the Judgment, from the Chief Magistrate’s Criminal Case. It is not disclosed from the Pleadings and Documents filed by the Parties, when, the Claimant was convicted by the Chief Magistrate. The date is not disclosed even in the brief Judgment of the High Court. This is the date when the Claimant should have stopped being paid half her salary, and placed on suspension without pay, until 14th March 2013, when the High Court allowed her Appeal.
40. The Respondents shall pay to the Claimant withheld half salary, from the date of suspension, 14th March 2008, to the date the Claimant was convicted by the Chief Magistrate’s Court, at the rate of ksh 12,262 monthly.
41. The Respondents shall pay to the Claimant withheld full salary from the date of conviction above, to 14th March 2013, when the Claimant’s Appeal was allowed, and suspension lifted, at the rate of ksh 37,525 monthly.



42. Certificate of Service to issue.
43. Costs to the Claimant.
44. Interest granted at court rate, from the date of Judgment till payment is made in full.

In Sum, it is Ordered: -

- a. It is declared that termination was unfair and unlawful.
- b. The Respondents shall pay to the Claimant: compensation for unfair and unlawful termination equivalent of 12 months' salary, at ksh 450,300 and notice at ksh 37, 525.
- c. The Respondents shall pay to the Claimant withheld half salary from the date of suspension, 14th March 2008, to the date the Claimant was convicted by the Chief Magistrate's Court, at the rate of ksh 12,262 monthly.
- d. The Respondents shall pay to the Claimant withheld full salary, from the date of conviction above, to 14th March 2013, when the Claimant's Appeal was allowed and suspension lifted, at the rate of ksh 37,525 monthly.
- e. Certificate of Service to issue.
- f. Costs to the Claimant.
- g. Interest allowed at court rate, from the date of Judgment till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, VIA E-MAIL, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY OF JUNE 2023.

JAMES RIKA

JUDGE

