



**Oludhe v Kenya Wildlife Service (Cause 56 of 2020)  
[2022] KEELRC 40 (KLR) (25 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 40 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 56 OF 2020**

**S RADIDO, J  
MAY 25, 2022**

**BETWEEN**

**CHRISTOPHER O. OLUDHE ..... CLAIMANT**

**AND**

**KENYA WILDLIFE SERVICE ..... RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 3 June 2021 and 7 March 2022, and Christopher Oludhe (the Claimant) and the Corporation Secretary with the Kenya Wildlife Service (the Respondent) testified.
2. Pursuant to Court directions, the Claimant filed his submissions on 7 April 2022 and the Respondent on 4 May 2022.
3. The Court has considered the pleadings, evidence, and submissions.

**Unlawful interdiction**

4. Interdiction is ordinarily provided for in an employer's Internal Human Resource Disciplinary Manual/Policy and within the public service it may be set out in Regulations or other subsidiary legislation.
5. The Claimant herein did not place before the Court a copy of the Respondent's Human Resource Manual/Policy or lead any evidence to show that the Respondent's Human Resource Manual did not provide for interdiction and therefore he did not lay an evidential foundation for this head of the claim.

**Unfair termination of employment**

6. The test whether a termination of employment is fair or not is measured against the requirements outlined in sections 35(1), 41, 43 and 45 of the *Employment Act*, 2007.



7. Where the employer has an Internal Disciplinary Policy, the protections set out therein also become relevant.
8. The Claimant relied on both the statutory and internal protections.

### **Statutory procedural fairness**

9. The Respondent issued a show-cause notice to the Claimant through a letter dated 13 February 2019. The show-cause letter set out the allegation against the Claimant and requested him to make a written response within 7-days. He was also alerted of contemplated disciplinary action.
10. The Claimant responded on 19 February 2019, and on 15 May 2019, he was interdicted.
11. On 2 July 2019, the Respondent invited the Claimant to appear for an oral disciplinary hearing on 8 July 2019 and advised him of the right to be accompanied by a colleague.
12. The Claimant attended the hearing. At the end of the session, he was alerted to be ready to appear before the Respondents Board the next day.
13. The Claimant appeared before the Board and the appearance was followed with a letter dated 30 July 2019, informing him of the termination of his employment.
14. The Claimant was informed of a right of appeal and on 8 August 2019, he requested for documents to enable him exercise the right of appeal.
15. The Claimant challenged the process leading to the termination of employment on the grounds that he was not given a copy of the Inquiry Report into the procurement allegations and that the invitation to the oral hearing on 8 July 2019 was served upon him on the eve of the hearing, leaving him with no chance to get a colleague accompany him.
16. He also contended that the invitation to the hearing before the Board on 9 July 2019 was served on the hearing day itself and that a member of the Board who had prepared the tender contract in contention sat through the hearing.
17. The Claimant further contended that by the time he was being called to the hearing of 9 July 2019, the initial Disciplinary Committee had not released an outcome.
18. The Claimant did not place before the Court any evidence that a member of the Disciplinary Committee had signed the tender documents in contention or that such involvement was prejudicial to his case or influenced the other members of the Committee.
19. The Claimant had been aware for several months of the allegations to confront and he had even made a written response. He did not request for the Inquiry Report to enable him respond to the show-cause or assert that he was incapable of responding without the Inquiry Report.
20. The Claimant did not ask the Respondent to furnish him with the Inquiry Report or any other documents until after being notified of the termination of employment and right of appeal.
21. The plea of Inquiry Report, in the Court's view is an afterthought.
22. The Claimant was called on the phone on 4 July 2019 and alerted of the hearing scheduled for 8 July 2019. At the end of the session, he was informed to be ready for an appearance before the Board the next day.
23. Clearly, he was not ambushed.



24. The Court is satisfied that the Respondent was in substantial compliance with the statutory requirements of procedural fairness.

### **Contractual/Internal Disciplinary protections**

25. The Claimant further urged that the disciplinary process was unfair because it was not conducted within the parameters outlined in the Respondent's Human Resource Manual.
26. In this regard, the Claimant asserted that the process was not concluded within the 3-months prescribed by the Human Resource Manual.
27. The Claimant further alleged bias on the part of the Disciplinary Committee on the ground that it was composed of 6 instead of 3-members, and that one of the members had drawn the contract/tender subject of the proceedings.
28. Despite contending that the Respondent did not comply with its internal disciplinary procedures as to the *constitution* of the Disciplinary Committee and the time frame within which to conclude the proceedings, the Claimant did not place a copy of the Human Resource Manual before the Court (the Respondent filed an extract which did not assist the assertions by the Claimant).
29. Apart from alleging bias, the Claimant did not provide any evidence of the bias to the Court.
30. The Court concludes that the Claimant did not prove violation of the Respondent's internal disciplinary processes.

### **Substantive fairness**

31. While the employee should demonstrate that an unfair termination of employment occurred, sections 43 and 45 of the *Employment Act*, 2007 ordains that the employer should prove as valid and fair, the reasons for terminating the employment contract.
32. The allegations set out in the show-cause against the Claimant were in brief, recommending direct procurement of the upgrade of the Sun system to Ilanga Systems (K) Ltd and preparation of a professional opinion recommending Ilanga Systems (K) Ltd without considering that Ilanga Systems (EA) Ltd and Ilanga Systems (K) Ltd were different legal entity (Ilanga Systems (EA) Ltd had provided the initial system).
33. The letter terminating the Claimant's employment gave the ground as negligence of duty and particulars were failing to comply with the law thus exposing the Respondent to incur an expenditure before provision of services, failing to consult the ICT department and failing to recognize the procurement was not an upgrade as initially conceived.
34. Despite the disparity in the language in the show-cause and termination letter, it is the view of the Court that the particulars or reasons leading to the termination of the Claimant's employment pointed to the same failure and did not constitute different grounds.
35. The Claimant did not deny recommending the direct procurement. His case was that direct procurement was lawful in the circumstances because Ilanga Systems (EA) Ltd and Ilanga Systems (K) Ltd were related companies (one a holding company of the other). He relied on section 103(2)(a) & (d) of the *Public Procurement and Disposal Act*, 2015.
36. The Act envisages direct procurement under certain conditions.



37. It is not in dispute that the Claimant recommended Ilanga Systems (K) Ltd. It is also not in dispute that Ilanga Systems (K) Ltd and Ilanga Systems (EA) Ltd had previous procurement contracts with the Respondent.
38. The Sun system which the Claimant stated was to be upgraded had been provided by Ilanga Systems (EA) Ltd and not Ilanga Systems (K) Ltd.
39. The Claimant was a procurement professional/practitioner of many years standing. He was at the apex of the procurement department, and he must have known or ought to have known that a company has a different legal personality from its sister or holding companies.
40. By recommending Ilanga Systems (K) Ltd, a related company to Ilanga Systems (EA) Ltd, the Claimant was not acting in good faith as a professional, considering that years early he had been put to task over procurement related irregularities.
41. The Court finds that the Respondent had valid and fair reasons to terminate the Claimant's employment.

### **Breach of contract**

#### **Gratuity**

42. The Claimant's contract provided that he would join a superannuation scheme.
43. The claim for gratuity is therefore misplaced.

#### **Certificate of Service**

44. A certificate of service is a statutory entitlement, and if one was not issued, the Respondent should issue one to the Claimant within 21-days.

#### **Salary during interdiction**

45. The Claimant did not provide evidence that under the contract or law, he was entitled to salaries withheld during interdiction in case of termination of employment and relief is declined.
46. Before concluding, the Court observes that the parties herein denied it the benefit of examining relevant documents to the claim such as the Human Resource Manual, the opinion rendered by the Claimant and minutes of the disciplinary hearing

### **Conclusion and Orders**

47. The Court finds no merit in the Cause, and it is dismissed with no order on costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25<sup>TH</sup> DAY OF MAY 2022.**

**RADIDO STEPHEN, MCIArb**

**JUDGE**

Appearances

For Claimant Omondi Abande & Co. Advocates

For Respondent Siganga & Co. Advocates



Court Assistant Chrispo Aura

