



**Mukulu v County Government of Machakos & another (Cause
1382 of 2015) [2022] KEELRC 1151 (KLR) (12 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1151 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1382 OF 2015**

**L NDOLO, J
MAY 12, 2022**

BETWEEN

ALICE MUKULU CLAIMANT

AND

COUNTY GOVERNMENT OF MACHAKOS 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

JUDGMENT

Introduction

1. The issues in dispute in this case arises from what is referred to as ‘nullification of recruitment’ communicated by letter dated 20th March 2012. The Claimant lays out her case in a Statement of Claim dated 5th August 2015 and filed in court on 7th August 2015. The 1st Respondent filed a Response on 16th September 2015.
2. At the trial, the Claimant testified on her own behalf but the Respondents did not call any witnesses. The Claimant and the 1st Respondent filed written submissions.

The Claimant’s Case

3. The Claimant states that she entered into an employment contract with the 1st Respondent on 10th January 2011, with the commencement date being 12th January 2011. She claims to have earned a monthly salary of Kshs. 16,630.
4. By way of background, the Claimant states that the Town Clerk of the Municipal Council of Machakos, the precursor of the 1st Respondent, wrote to then Permanent Secretary of the then Ministry of Local Government, seeking ministerial authority to fill vacant positions.



5. By letter dated 23rd March 2010, the then Permanent Secretary informed the then Town Clerk of the Municipal Council of Machakos that the Minister had approved the request to fill vacant positions, create posts and effect staff upgrading, promotions and re-designations.
6. Pursuant to the approval, the Claimant was appointed to the post of Market Attendant III. The Claimant states that she was confirmed in her post on 24th November 2011.
7. The Claimant further states that she subsequently received a letter of nullification of employment from the 1st Respondent, which stated that the 2nd Respondent had issued a directive for nullification of her employment.
8. The Claimant asserts that she was not given a good reason for the nullification of her employment.
9. The Claimant therefore seeks reinstatement to her post within the 1st Respondent's establishment as provided under Section 49(3) of the *Employment Act* or in the alternative, maximum compensation as provided by Section 49(1) of *the Act*.
10. The Claimant also asks for costs of the claim.

The Respondents' Case

11. In its Response dated and filed in court on 16th September 2015, the 1st Respondent denies the Claimant's claim and states that the Claimant has never been its employee.
12. The 1st Respondent further states that if at all the Claimant had been employed and her employment nullified, she must have been irregularly employed.
13. The 1st Respondent maintains that the Claimant ought to have filed its claim against the Transition Authority.

Findings and Determination

14. There are two (2) issues for determination in this case:
 - a. Whether the Claimant has proved a case of unlawful termination;
 - b. Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

15. On 20th March 2012, the 1st Respondent wrote the following letter to the Claimant:

“RE: NULLIFICATION OF RECRUITMENT

Refer to the above stated matter.

The office has received letter ref. MLG 1308-16/IV (34) dated 23rd December, 2011 communicating the decision of Public Service Commission of Kenya nullifying the recruitment of lower cadre staff in the Municipal Council of Machakos which was done in January, 2011.

The council appealed against the decision of the commission and received letter ref. 1308-16/IV(42) dated 29th February, 2012 from the Office of the Deputy Prime Minister and Ministry of Local Government communicating the decision of Public Service Commission of Kenya rejecting the said appeal and directed the council to carry out the exercise afresh in accordance with the service regulations.



In view of the above, you are hereby informed that your services have been terminated with effect from the date of this letter and directed to handover all the Council documents/property which you may be having including staff identification card to your supervisor.

We thank you for your services for the period you worked with the council. Meanwhile, you are encouraged to apply for re-employment once the council advertises for the recruitment exercise.

Yours Sincerely,

(signed)

A.S. Abdullahi

TOWN CLERK”

16. Section 45 of the *Employment Act* states as follows:
 1. No employer shall terminate the employment of an employee unfairly.
 2. A termination of employment by an employer is unfair if the employer fails to prove-
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason-
 - i. related to the employee’s conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure.
17. In terminating the Claimant’s employment, the 1st Respondent apparently relied on a letter dated 23rd December 2011, by which the 2nd Respondent had ostensibly nullified the recruitment of lower cadre staff in the Municipal Council of Machakos.
18. From the evidence on record, it is evident that the Claimant’s employment was preceded by ministerial authority to fill vacant positions after which the Claimant was duly interviewed and subsequently issued with a letter of appointment and was thereafter confirmed in her position.
19. In its Response to the Claimant’s claim the 1st Respondent alluded to some unspecified irregularities regarding the Claimant’s employment. It is apparent that the Claimant was not made aware of any such irregularities prior to the termination of her employment. At any rate, it was not her responsibility to check and assure the efficacy of the recruitment process.
20. In its decisions in *Michael Mwalo v Board of Trustees National Social Security Fund* (Cause No 1093 of 2012) and *Nicholas Muturi Okemwa & 8 others v Judicial Service Commission*, this Court held that a person dealing with a senior official of an organisation is not expected to go into the corporate boardroom to confirm whether the official has authority to take the action they seek to take.
21. In this case, the Claimant was issued with a letter of appointment after going through an interview. She had no reason to doubt the recruitment process nor was she expected to interrogate it. If there were any irregularities in the recruitment process, the Claimant could not be blamed for them as she was not in pari delicto with the Respondents and their officers.
22. That said, I find and hold that the Respondents have failed to establish a valid reason for terminating the Claimant’s employment as required under Section 43 of the *Employment Act*. I further find that in



terminating the employment, the Respondents failed to adhere to the procedural fairness requirements set by Section 41 of *the Act*.

Remedies

23. The Claimant seeks reinstatement as a primary remedy. However, in light of the time lapse post termination, I find that reinstatement would not be an adequate remedy in this case. Instead, I award the Claimant twelve (12) months' salary in compensation. In arriving at this award, I have taken into account the Claimant's length of service plus the fact that her employment was cut short by the Respondents' unlawful action.
24. I further award the Claimant one (1) month's salary in lieu of notice plus leave pay as admitted by the 1st Respondent in its written submissions.
25. Finally, I enter judgment in favour of the Claimant as follows:
 - a. 12 months' salary in compensation.....Kshs. 187,560
 - b. 1 month's salary in lieu of notice.....15,630
 - c. Leave pay for 1 year.....15,630Total.....218,820
26. This amount will attract interest at court rates from the date of judgment until payment in full.
27. The Claimant will have the costs of the case.
28. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF MAY 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Katunga Mbuvi for the Claimant

Miss Muhia h/b for Mr. Muoki for the Respondent

