



**Chepchirchir v County Government of Uasin Gishu (Cause 36 of 2019)  
[2022] KEELRC 12904 (KLR) (14 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12904 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 36 OF 2019  
NJ ABUODHA, J  
OCTOBER 14, 2022**

**BETWEEN**

**GRACE CHEPCHIRCHIR ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF UASIN GISHU ..... RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim filed on August 15, 2019 the claimant averred that she was employed by the respondent a licensing and compliance officer on temporary basis on August 31, 2015. The claimant was subsequently engaged on term employment as an assistant revenue clerk by a letter dated October 9, 2017 at a monthly salary of Ksh 23,620.
2. The claimant dutifully and diligently discharged her duties however, the respondent by a letter dated August 8, 2018 placed the claimant on suspension on allegations of gross misconduct over loss of revenue in the sum of Ksh 1,200,772. She was invited to show cause why severe unspecified disciplinary action should not be taken against her. The claimant responded on August 25, 2018 and was thereafter invited for disciplinary hearing on 1 September 2, 2018. On October 15, 2018 the respondent issued the claimant with a dismissal letter while informing her of her right of appeal to public service commission which she exercised.
3. The claimant alleged that her termination was unlawful because she was not accorded an opportunity to be heard prior to being suspended in breach of natural justice and section 76(1) and (2) of the *County Governments Act*. The claimant further alleged that she was exposed to indefinite suspension and further that the termination did not accord with section 41 of the *Employment Act*. The claimant was further not informed in advance, supplied with evidence and given opportunity to examine witnesses which could have guaranteed a fair hearing as required section 41 of the *Employment Act*.



4. The claimant therefore sought a declaration from the court that the suspension and the eventual termination was unfair and unlawful. The claimant further sought reinstatement to employment without loss of benefits and seniority; payment of the withheld half salary and 12 months' salary as compensation for unfair termination of service.
5. The respondent filed a memorandum of response on November 21, 2019 admitting that the claimant was its employee working as an assistant revenue clerk. The respondent further stated that the suspension letter and notice to show cause issued to the claimant on August 8, 2018 were clear on the reason for the claimant's dismissal from service being participation in manipulation of single business permit between receipting stage and permit autogeneration stage.
6. According to the respondent, the claimant took part in compromising the licensing system and or process which resulted to loss of county revenue amounting to over Ksh 1,200,772/=. The respondent further averred that the claimant was given a chance to be heard and she put in a written response to the charges, attended a disciplinary hearing in the presence of a representative of her choice where she was accorded ample time to state her case in defence.
7. At the hearing the claimant stated that she was relying on her witness statement as her evidence in chief and also her documents filed in support of the claim.
8. According to the claimant, she complained about the dismissal because due process was not followed. She was shocked to receive her suspension letter in the mail.
9. According to her she appeared before the disciplinary committee after one week from suspension.
10. It was her evidence that she was not allowed to be accompanied by anyone to the disciplinary panel and that she appeared for only five minutes and was told to await the outcome. The claimant denied manipulating the system.
11. In cross-examination she stated that her work was to inspect business in Langas area to see if they had taken business permits. She further stated that she learned that the revenue system had been manipulated in 2018 and that she learned about it from the suspension letter. The claimant stated that she was not aware audit had been done to establish the manipulation.
12. It was her evidence that in the course of her work she interacted with several businesses including Chepalungu bar. She however did not interact with Blessings salon. According to her however, her interaction with Chepalungu bar was not in connection with the license and that she was not aware Chepalungu bar's license was in the process of being revoked and further that she was not aware that Chepalungu bar wrote back explaining how they received their license.
13. Concerning suspension, it was her evidence that she was suspended on August 8, 2018 and asked to show cause why disciplinary action should not be taken against her. The suspension letter gave reasons for the suspension and that she responded to the show cause letter. She was subsequently called for a disciplinary hearing and informed of her right to be accompanied by a representative and that she came with a representative from the union. The charges were read to her and she responded. According to her at the conclusion of the hearing she was not absolved from the charges. She was subsequently dismissed from service. The dismissal letter contained reasons for dismissal and informed her of her right of appeal against the dismissal.
14. The respondent's 1<sup>st</sup> witness Mr Titus Kimaiyo stated that he was the director ICT and that he recorded a statement on September 23, 2021 which he relied on as his evidence in chief.



15. According to him the claimant was a licensing officer at Langas ward where Chepalungu bar was located. The owner of the bar had applied for a license and another license was manipulated from the system and given to Cheplaungu bar. It was his evidence that the suspension letter did not mention Chepalungu bar and New Discount shop.
16. The respondent's second witness Mr Kipleting Ngetich stated that he was a director for trade and that he recorded a statement on September 22, 2021 which he relied on as his evidence in chief. In cross-examination he stated that paragraph 11 of his statement mentioned some seven people however these people were not mentioned in the suspension letter.
17. The respondent's 3<sup>rd</sup> witness Mr Wiliam Koech stated that he worked for the respondent as the secretary to the county public service board. He recorded his statement on September 22, 2021 which he adopted as his evidence in chief. He also relied on the documents filed on November 21, 2019.
18. In cross- examination he stated that he had the minutes of the disciplinary hearing and that the suspension letter mentioned loss of Ksh1,200,772/= and the dismissal letter talks of Ksh 71,080/= attributed to the claimant.
19. The respondent's last witness Ms Mary Kiarie informed the court that she worked for the respondent as director internal audit and that she prepared a statement dated September 15, 2021 which she adopted as her evidence in chief. The claimant's counsel had no questions for her in cross-examination.
20. The claimant herein has faulted her suspension and eventual termination contending that they were unfair and unlawful. Regarding the suspension, the claimant contended that she was not heard before the suspension was done.
21. The suspension letter dated August 8, 2018 informed the claimant in the final paragraph that the county public service board deliberated on her issue and decided that she be suspended from exercising duties of her office pending further investigation and finalization of her case.
22. The county public service manual relied on by the respondent at clause D 31(a) permits interdiction in cases where gross misconduct which was likely to lead to dismissal has been reported and requires investigation. The court takes the view that suspension is usually preliminary and is usually invoked to allow investigation into accusations against an employee especially where the continued presence of such employee at their place of work might impede or affect the integrity of the investigations. This sort of suspension may be described as preventive suspension as opposed to punitive interdiction or suspension which if provided for in the contract of employment can be handed down as one of the disciplinary measures against an employee. In the case of punitive suspension or interdiction an employee is entitled to be heard before they are effected. However preventive suspension or interdiction to allow further investigations, unless expressly provided for in the contract of employment, do not require a hearing before they are effected.
23. Regarding the disciplinary hearing process, the claimant was issued with a notice to show cause to which she respondent. She was subsequently invited for disciplinary hearing which she attended with a union official and presented her side of the case. At the conclusion of the hearing the respondent became of the view that the claimant did not absolve herself from the accusation against her and decided to terminate her service and reminded her of her right of appeal to the public service commission, which right she exercised. To this extent the court is satisfied that the claimant was taken through fair procedural process before the termination of her service.
24. Regarding the reasons for termination, the claimant was accused of participating in the manipulation single business permit between receipting stage and permit auto generation stage. The claimant



acknowledged in her evidence that she interacted with Chepalungu bar in the course of her work. Chepalungu bar was one of the business premises whose permit was alleged to have been manipulated. The respondent attached as one of its documents a letter from Chepalungu bar complaining about their license and implicating the claimant and how she received some Ksh 8000/= through Mpesa.

25. Under section 47(5) of the *Employment Act*, proof of reasons for termination and or dismissal is cast upon the employer however such proof is on balance of probability and not beyond reasonable doubt like in criminal cases. All it requires for the employer to show that the acts or omissions the employer is accused of more probably took place than not.
26. From the testimony of the respondent's witnesses and documents filed in support of the response to the claim the court is persuaded that it was more probable than not that the claimant participated in the manipulation of single business permit as alleged.
27. In conclusion the court finds and holds that there existed valid reasons for termination of the claimant's service and that in carrying out the termination, the respondent followed a fair procedure as stipulated under section 41(1) of the *Employment Act*. The claim is therefore found without merit and is hereby dismissed with costs.
28. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 14<sup>TH</sup> DAY OF OCTOBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

