



**Abdi v Wajir County Assembly Service Board (Cause 106 of 2016)  
[2022] KEELRC 13169 (KLR) (10 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13169 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 106 OF 2016  
L NDOLO, J  
NOVEMBER 10, 2022**

**BETWEEN**

**BARE BILLOW ABDI ..... CLAIMANT**

**AND**

**WAJIR COUNTY ASSEMBLY SERVICE BOARD ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By a claim dated January 26, 2016, the claimant proceeds against the respondent seeking relief for unlawful termination of employment. the respondent filed a response dated April 26, 2021.
2. The matter proceeded to full trial with the claimant testifying on his own behalf and the respondent calling Shalle Sheikh Mursal. The parties further filed written submissions.

**The Claimant's Case**

3. The claimant states that he was employed by the respondent on July 14, 2014, in the position of Transport and Logistics Officer, at a monthly salary of Kshs. 41,900, house allowance of Kshs. 20,000 and other allowances of Kshs. 8,000.
4. The claimant's employment was terminated by letter dated December 3, 2015, which the Claimant states was served on him on January 12, 2016.
5. The claimant terms the termination of his employment as unlawful and unfair, for want of a valid reason and violation of due process.
6. The claimant seeks the following remedies:
  - a. Reinstatement;



- b. General and punitive damages;
- c. Costs.

### **The Respondent's Case**

- 7. In its response dated April 26, 2021, the respondent admits the existence of an employment relationship between itself and the claimant.
- 8. The respondent denies that the termination of the claimant's employment was unlawful or unfair.
- 9. The respondent states that the subject termination of employment was not for any disciplinary issues or concerns but was informed by an audit and rationalisation process, which revealed that the claimant's position and those of 16 other employees had been filled without advertisement and interviews.
- 10. The respondent further states that the position held by the claimant was not provided for in its service structure, making out a clear case of unprocedural recruitment.
- 11. The respondent maintains that the termination of the claimant's employment was procedural.

### **Findings and Determination**

- 12. From the pleadings and submissions filed by the parties, three (3) issues fall for determination in this case:
  - a. Whether this court has jurisdiction to entertain the claimant's claim;
  - b. Whether the termination of the claimant's employment was lawful and fair;
  - c. Whether the claimant is entitled to the remedies sought.

### **Jurisdiction**

- 13. The respondent challenges the jurisdiction of this court to hear and determine the claim. In pursuing this stance, the respondent relies on section 77(1) and (2)(d) of the [County Governments Act](#), which provides as follows:
  - (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the "Commission") against the decision.
  - (2) The commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of:
    - (a) ...
    - (b) ...
    - (d) disciplinary control;
- 14. It is an undisputed fact that the termination of the Claimant's employment had nothing to do with disciplinary control. Rather, it arose out of what the respondent deemed to be an irregularity in the recruitment. The foregoing provision of the [County Governments Act](#), on which the respondent



anchors its objection the jurisdiction of this court to hear and determine the dispute, is clearly out of reach in this case. The objection therefore crumples and is overruled.

### The Termination

15. The termination of the claimant's employment was communicated by letter dated December 3, 2015, stating thus:

“Dear Bare Billow Abdi

RE: Termination of Employment

We regret to inform you that your employment with Wajir County Assembly is hereby terminated with effect from December 31, 2015.

The Assembly will pay you one month severance salary which is the month of December 2015.

Kindly return any property of the institution under your care.

The County Assembly Public Service Board thanks you for the services rendered during your stay and wishes you the best in your future employment.

Thanks

Yours Sincerely

Mr. Osman M. Adan

(signed)

Clerk/secretary

County Assembly Service Board”

16. This letter does not disclose any reason for termination of the claimant's employment. The respondent's witness, shall sheikh mursal however testified that the claimant's employment was terminated because the recruitment was irregular in the first place.
17. Mursal told the court that the position held by the claimant was neither established nor advertised. He added that there were other persons who had similarly been affected.
18. From the evidence on record, the claimant was employed by a letter dated September 6, 2014 duly signed by the then Clerk/Secretary to the Wajir County Assembly Service Board.
19. In its decision in *Alice Mukulu v County Government of Machakos & another* (Cause No 1382 of 2015) [2022] KELRC 1151 (KLR) (12 May 2022) (Judgment) this court held that an employee who is issued with a letter of appointment by an authorised officer has no reason to doubt the recruitment process and is not expected to interrogate it. Such an employee cannot be blamed for any irregularities in the recruitment process as they are not in *pari delicto* with the employer and its officers.
20. 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.
21. A valid reason for termination of employment is further defined in section 43 and the mandatory fair procedure is set out in section 41 of the Act.
22. The excuse advanced by the respondent for termination of the claimant's employment does not qualify as a valid reason as contemplated by the Employment Act. Further, the claimant was not subjected to any due procedure, prior to the termination.
23. As a result, I find and hold that the termination of the claimant's employment was both substantively and procedurally unfair and he is entitled to compensation.

### **Remedies**

24. 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 appropriate remedy in this case.
25. Instead, I award the claimant six (6) months' salary in compensation. In arriving at this award, I have taken into account the claimant's length of service plus the fact that his employment was cut short by the Respondent's unlawful action.
26. In the end, I enter judgment in favour of the claimant in the sum of Kshs. 417,540 being six (6) months' salary in compensation for unlawful and unfair termination of employment.
27. This amount will attract interest at court rates from the date of judgment until payment in full.
28. The claimant will have the costs of the case.
29. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>TH</sup> DAY OF NOVEMBER 2022**

**LINNET NDOLO**

**JUDGE**

#### **Appearance:**

Mr. Ingutya for the Claimant

Mr. Mwiti for the Respondent

