

(FIRST SESSION)

**PETITION BY ELIZABETH WANJIRU GICHURU, A FORMER EMPLOYEE OF
NAIROBI CITY WATER AND SEWAGE CO.LTD.**

THAT, despite having responded to the notice to show cause, I was later summarily dismissed from service;

PETITION BY ELIZABETH WANJIRU GICHURU, A FORMER EMPLOYEE OF
NAIROBI CITY WATER AND SEWAGE CO. LTD.

THAT, consequently the ministry of labour appointed a conciliator to try and arbitrate in my case. who made a recommendation for my reinstatement back to service but my employer wilfully and/or maliciously failed to comply with;

THAT, this honourable house is the only available redress in pursuit for justice as I feel that I was dismissed unfairly without any valid reason;

THAT WHEREAS, I confirm that efforts have been made to have the matter addressed by the relevant body, it failed to give a satisfactory response;

AND THAT, all the matters in respect of which the petition is raised is not pending before any court of law or constitutional body.

HEREFORE, your humble Petitioner PRAY that the County Assembly of Nairobi County intervenes and ensure that; -

- a) I be reinstated back to work under similar terms and conditions as she held before she was dismissed; and
- b) The Nairobi Water and Sewerage Company be compelled to pay the petitioner all her salary due in arrears.

And your Petitioner will forever pray.

Presented by;
Hon. Speaker,

On behalf of;
ELIZABETH WANJIRU
- 0721994657.

rate
Kindly process as per
the standby orders
THE CLERK
NAIROBI CITY COUNTY ASSEMBLY
P.O BOX 458444
11/1/2022



DEAR SIR/MADAM

RE: PETITION BY ELIZABETH WANJIRU GICHURU, A FORMER EMPLOYEE OF
NAIROBI CITY WATER AND SEWAGE CO.LTD

This petition is presented in line with article 37 of the Kenya constitution 2010 and article 15 (1) of the county government Act 2012.

I am the above named person a resident of Nairobi City County. I was employed by then Nairobi city council on 25th February 1999.

I worked diligently to Nairobi city council for (5) five years up to 22nd April 2004 when I was seconded to the newly formed Nairobi water Sewerage Co Ltd under my then terms and conditions of service

The memorandum attached to my petition is prepared by KENYA COUNTY GOVERNMENT WORKERS UNION where I am a member and VINCENT O. ODOUR whom his service was terminated UNLAWFULLY alongside with mine.

On 23rd October 2013, we were accused by NCWS three of us myself, Nancy Nduta (PI no.20040) and Simon Kiama (PI No.73570)

On my side I was accused of editing AC 1301556 in my show cause using Nancy Nduta's CMS profile. Nancy Nduta was accused in her show cause of giving me her CMS profile which I had used in the account 1301556 where she agreed in writing that it was okay for officials attached to the same department to share where there is a reason for good service to the customers. Her appeal of summary dismissal dated 29th May 2014 attached.

Simon Kiama Mwangi payroll No. 73570 was accused of giving me wrong information and interfering with A/C No. 1301566 since the case involved three of us.

In my response to show cause, I explained that since i was in charge of customer care it was my day to day work to edit account as per the information given by the ground meter reader like Simon Kiama and others who had the knowledge of the ground.

I also explained why I used Nancy Nduta's CMS profile since i had forgotten mine at home, since i had gone for a meeting and not to work and even Nancy agreed by writing that she gave me her CMS profile.

Mr. Simon Kiama who was the source of the case and information of A/C 1301556 failed to show the security officials the position of the account in the ground twice that was on 27th January 2014 and 14th May 2014 copies attached. I went through from suspension from work, summon to company's corporate disciplinary committee but to my surprise I received my summary dismissal letter dated 14th May 2014 being guilty of account No. 1301566 which was different from my showcase. The Kenya County Government workers Union wrote to the company's management demanding why a single person among three should be sacrificed? Dated 20th January 2015 where by the company didn't give any mature reason but just a discrimination against Kenya constitution article 27 of 2010.

III R.E. Kanana - CA
Please deal.

Mfca
PCA
26/10/22

My UNION, KENYA GOVERNMENT WORKERS Union took the matter and reported a trade dispute to the ministry of labor for further arbitration.

The ministry of labor appointed a conciliator known as J.M Kiraguri on the same to try and arbitrate in my case.

The conciliator having listened to both parties that is the Union represent myself and the employer, made a recommendation for my reinstatement back to service. Dated 16th October 2015.

This was largely due to the fact that the reasons for my termination was not valid since the account i was accused in my show course 1301556 was different in my summery dismissal dated 29th May 2014 documents attached.

Since the case was involving three, no one should be singled out because all of us played a role and I should not be discriminated.

Mr. Simon Kiama was the source of information and he was the one with information in the ground whom the security officer said he failed to spot where those account were 1301556 and 1301566 copies attached.

However, Nairobi water sewerage CO.Ltd failed to comply with the said recommendation of Ministry of Labor's appointed conciliator and the union ended up writing several threatening letter which were ignored by the company.

After going to union's office for so many times being told by union officers in charge of my case to to continue waiting, I become impatient and on 25th April 2019 I wrote to the general secretary K.C.G.W.U about my unsold matter copy attached.

The Kenya county government workers Union who has the knowledge of Employment and labor relation time and process failed to escalate the case to the employment and relation court within the stipulated timeline of three years hence the case is now time barred for filling in court.

This honorable assembly is the only available remedy for me to seek redress in my case in my pursuit of justice as I feel I was dismissed unfairly without any valid reason.

I therefore beseech this honorable house to consider my case to ensure justice is delivered to me to restore my dignity considering that the company had taken more than maximum period 3 month required by the CBA for anyone to be under suspension and enables me to meet my financial obligation.

This is my Humble prayer to honourable house.

Attached herein please find a copy of memorandum filed at the ministry of labor for your perusal and action thereof.

I so pray.



ELIZABETH WANJIRU

0721994657.

0722134850
Nancy pro



MINISTRY OF LABOUR, SOCIAL SECURITY & SERVICES
DEPARTMENT OF LABOUR

Tel: +254 (020) 2729800
Fax:
Email: labourcommissioner@labour.go.ke
When replying, please quote

Social Security House, Bishops Road
P.O. Box 40326-00100
Nairobi, KENYA

Ref: MLSSS/LD/IR/4/8/2015

Date: 16 October 2015

The General Secretary
KLGWU
P.O. Box 55827
NAIROBI

The Managing Director
Nairobi City Water & Sewerage Co. Ltd
P.O. Box 30656-00100
NAIROBI

Dear Sirs,

RE: TRADE DISPUTE

I refer to the Chief Industrial Relations Officer's letter of even reference dated 5th March 2015 in which I was appointed to act as a conciliator.

I understand the dispute to be:

"Unlawful termination of employment of Vincent Ochieng and Elizabeth Wanjiru"

Parties were invited for conciliation meetings in this office on several occasions to deliberate on the issues in attempt to have a lasting solution over the matter. Documentary evidence was availed before the conciliator in relations to each parties argument in support of their case.

I evaluated and analyzed the evidence and hereby wish to make the following observation and recommendation:

Findings:

The issue for consideration is whether the company's action was fair and justifiable. The case against Vincent Ochieng Odiwour was that the management's allegation was that he posted invalid transactions amounting to

Ksh.7,945,971/= to various customers but at the same time the company had attached trainees who had the mandate to use password to access all information. The management did not deny that these trainees were using Vincent's password. The Management further failed to prove that their allegation of losing Ksh.7,945,971/= due to misposting was real or given any complainant or beneficiary of the misposting. It is against this background that I do find that this termination was unfair based on the procedure and lack of justification as is required in Section 47(5) of Employment Act. On the side of Elizabeth Wanjiru Gichuru the union's claim of discrimination based on that this case involved three actors and two were reinstated leaving one to be subjected to summary dismissal was unfair labour practice.

Secondly, the account that was used to subject Madam Gichuru to show cause suspension was different from the one the management made reference to on the dismissal letter which raises a lot of confusion and further disqualifies the entire disciplinary process. If therefore the management can agree to the fact that these two different accounts edited in the letters of suspension and dismissal was a typing error. This is because Madam Gichuru does not have any other misconduct prior to this one, this first misconduct should have been used as a first warning.

Recommendation:

In view of the above findings, I wish to recommend as follows:

- i. That Nairobi City Water and Sewerage Company reinstates the two grievants to their former position or relatively comparable one at the prevailing terms and conditions of employment
- ii. That the management pays them all their salaries from the date of suspension
- iii. That all parties agree to this recommendation as a way of settling this dispute

Lastly, I wish to thank every party for co-operation and commitment in this conciliation process.

Yours faithfully,



J.M. KIRAGURI
CONCILIATOR

NAIROBI CITY WATER & SEWERAGE COMPANY LTD.

KAMPALA RD, P. O. Box 30656-00100, Nairobi, Kenya

Tel: +254 20 3988598/0005013598/000

Fax: +254.20 552126

Email: info@nairobiwater.co.ke

www.nairobiwater.co.ke



NCWSC/HRD/IR/73570/Vol.I/2014

27th January, 2014

Simon Kiama Mwangi

Payroll No. 73570

P.O Box 30656

Nairobi

Northern Region

Dear Simon,

RE : SUSPENSION FROM WORK

Reference is made to the Regional Manager – Northern Region show cause letter ref. NCWSC/HR. ADMIN/NR.73570/20/EMM/cao dated 17th December, 2013 indicating that on 1st October 2013 you approached Elizabeth Gichuru (33380) of Customer care section and un-procedurally requested editing/transfer of account No.1301566 in LR.No.24430 belonging to M/S Mary N.Waweru from Dandora, North Eastern Region to Mathare in Northern Region with an intention to deny the Company's rightful revenue. It is also noted that you failed to show the Security Supervisor the actual location of the account on the ground. Your response letter dated 20th December, 2013 does not exonerate you from the above misconduct.

The above alleged behavior amounts to gross misconduct as provided in the Company's Human Resources Policies and Procedures Manual clause 8.23.2 (viii) which states that "Committing a criminal offence against or to the detriment of NCWSC's property. This may include undue influence, taking bribes, forgery, and misappropriation of funds or intentionally damaging NCWSC's property" and violation of code of conduct clause (10 & 11) on performance standards and integrity.

In view of the above, you are hereby suspended from duty with immediate effect to facilitate further investigation. While on suspension you will be entitled to a house allowance and medical benefit only.

Rose Kariuki - Mwaura
Human Resources Manager

NAIROBI CITY WATER & SEWERAGE COMPANY LTD.

KAMPALA RD, P. O. Box 30656-00100, Nairobi, Kenya

Tel: +254 20 3988598

Email: info@nairobiwater.co.ke

www.nairobiwater.co.ke



NCWSC/HRD/IR/73570/Vol.1/2014

14th May, 2014

Simon Kiama Mwangi
Payroll No.73570
P.O Box 71
Karatina

Tel: 0721 356 654

Dear Simon,

RE: SUMMARY DISMISSAL.

Reference is made to your suspension from duty through our letter Ref. NCWSC/HRD/IR/73570/Vol.1/2014 dated 27th January, 2014 indicating that on 1st October 2013 you approached Elizabeth Gichuru (P/No.33380) of Customer Care Section in Northern Region and un-procedurally requested editing/transfer of Account No. 1301566 in LR No. 24430 belonging to Ms Mary N. Waweru from Dandora, North Eastern Region to Mathare in Northern Region without authority and with an intention to deny the Company's rightful revenue. It is also noted that you failed to show the Security Supervisor the actual location of the said account on the ground.

Following your appearance before the Corporate Disciplinary Committee on 16th April, 2014 on the above stated case, the committee found you guilty of the offense as charged. Please note that the said conduct amounts to gross misconduct as provided under Section 44 subsection (4) paragraph (g) of the Employment Act 2007, Clauses 8.23.2 (viii) of the Company's Human Resources Policies and Procedures Manual and the Company's Code of Conduct for Employees.

Based on the above facts, the Company has therefore decided to Summarily Dismiss you with immediate effect on account of gross misconduct.

On receipt of this letter, you are to handover your staff ID and all official tools and implements issued to you in the course of your employment. You are also required to clear yourself of any liabilities with the company before your dues, if any, and certificate of service are released to you.

You have the right to appeal if dissatisfied with the above decision to the Managing Director within fifteen (15) calendar days from the date of this letter.

Yours faithfully,

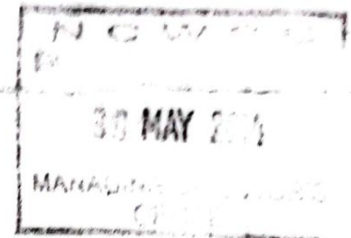

Eng. Philip Gichuki
Managing Director

NANCY NDUTA

P/NO 20040

29TH MAY 2014

THE MANAGING DIRECTOR,
NAIROBI WATER COMPANY LIMITED,
NAIROBI.



Dear Sir,

RE: APPEAL OF SUMMARY DISMISSAL NCWSC/HRD/IR/20040/VOL.20014

Reference is made to the above letter dated 14 May 2014

This is to respond to the issue raised and I wish to state that my colleague requested my CMS profile and since I was stationed in Kasarani and she was at Pangani office. I saw no harm since she had forgotten her password. She had informed me that there was no one in the front desk.

I also wish to state that I have never been cautioned against giving out my password as I knew it was illegal when the regional manager wrote me a show cause letter. Indicating the behavior is contrary to the Human Resource policies and procedures

I kindly request you to review the above and give me a chance to serve our company once again as I have never been given any caution or warning letter for the last 15 years that I have been employed.

Yours faithfully


NANCY NDUTA

P/NO/20040

P.O. Box 440-00300
Nairobi
8th April 2019
0921-994657

The General Secretary
K.C.G.W.U
P.O. Box 55827-00100
Nairobi



Dear Sir,

RE: UNLAWFUL SUMMARY DISMISSAL

I wrote to inform your that I used to work at Nairobi water company. I received my Summary Dismissal on 16th May 2014.

The matter was taken by your office and with the direction of your office through writing the management was to explain the course of the action your office was not satisfied with their evident and the matter proceeded by your office to the Ministry of Labour Social Security and Services (Department of Labour). The dispute was to be handled by Mr. J.M. Kiraguri of Headquarter Labour office to act as a reconciliator and by mean of writing I and the company called for reconciliation dated 5th March 2015.

After the reconciliation and considering my fact and those from the company resolved that the company's act of my dismissal letter was unlawful and recommended that I should be reinstated.

Sir, your office wrote several letter demanding my reinstatement and your office wrote a final letter to the company giving them 14 days failure to which your office to take the mat