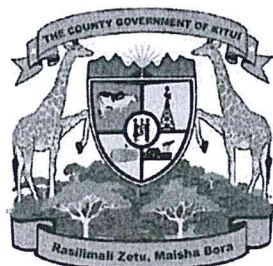


REPUBLIC OF KENYA



COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY

SECOND ASSEMBLY- FIFTH SESSION (2021)

COMMITTEE ON LABOUR AND SOCIAL WELFARE

**REPORT ON THE COMPLAINTS ON SUMMARY
DISMISSAL FROM SERVICE BY KITUI WATER AND
SANITATION COMPANY (KITWASCO) EMPLOYEES**

**The Clerk's Chamber,
County Assembly of Kitui,
Assembly Buildings,
Kitui, Kenya**

MAY, 2021

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ABBREVIATIONS

EACC	Ethics and Anti Corruption Commission
KENAO	Kenya National Audit Office
KITWASCO	Kitui Water and Sanitation Company
MCA	Member of County Assembly

ANNEXURES

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PREFACE

Mr. Speaker,

It is my pleasure to present the Report by the Committee on Labour and Social Welfare on the Complaints on Summary Dismissal from Service by Kitui Water and Sanitation (KITWASCO) Employees.

Mandate the Committee

Mr Speaker,

Sectoral Committees mandate, functions and roles are as stipulated in the County Assembly Standing Orders No. 190(5) and as contained in the second schedule that outlines the subject areas for consideration by sectoral committees. The limitation of the committee mandate is as outlined in Standing Order No. 192 (1).

Standing Order No. 190(5) outlines the functions of the Sectoral Committee as:

- i) To make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.
- ii) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- iii) To investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- iv) To study and review all county legislation referred to it;
- v) To study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives.

Membership of the Committee

The Committee comprises of the following members:

- | | |
|--------------------------------|------------------|
| 1. Hon. Munyoki Mwinzi | Chairperson |
| 2. Hon. Charles Muthui Maema | Vice Chairperson |
| 3. Hon. Elizabeth Ndunge Peter | Member |
| 4. Hon. David Masaku | Member |
| 5. Hon. Nicholus Mwalali | Member |
| 6. Hon. Josephine Kavivi Mutie | Member |
| 7. Hon Boniface Kasina | Member |
| 8. Hon. David Thuvi | Member |
| 9. Hon. Anne M. Mumo | Member |

10.Hon. Fredrick Nthuri

Member

11.Hon. Deiys Mukala

Member

Background and Legal Framework

Mr. Speaker,

On 6th November 2019 and 19th February, 2020 the Committee received complaints from Mr David Muthami and Esther Simeon respectively alleging that they had been unfairly and summarily dismissed from service at KITWASCO.

Section 44 of the Employment Act governs summary dismissal and states as follows:

44.(1) Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(2) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.

(4) Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if:-

(c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;

(g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.

Terms of Reference

The Committee's terms of reference were to:-

- i) Conduct an inquiry into the complaints and any other relevant matter;
- ii) Compile a report with recommendations for tabling and consideration by the Assembly.

Methodology

The Committee adopted the following methodology:

1. Invitations and interrogation of the complainants and their former employer;
2. Requests for information.

Committee proceedings

The Committee held several meetings to interrogate the witnesses and thereafter retreated English Point Marina- Mombasa as from 10th to 15th May, 2021 to compile this report. The outcome of the Committee proceedings is as outlined in this report.

Acknowledgement

Mr. Speaker,

On behalf of the Committee on Labour and Social Welfare, I extend my gratitude to the Speaker, Members of the Committee, Office of the Clerk and the staff attached to the Committee for their continuous support, assistance, and commitment in executing their duties.

It is therefore my pleasant duty, on behalf of the Committee Labour and Social Welfare to present this Report and recommend it for consideration and adoption by the House.

SIGNATURE:  DATE: 03/05/2021

**HON. MUNYOKI MWINZI- M.C.A.,
CHAIRPERSON, COMMITTEE ON LABOUR AND SOCIAL
WELFARE,
COUNTY ASSEMBLY OF KITUL.**

SUBMISSIONS BY WITNESSES

Mr Speaker,

The Committee met the following:

- i) Mr David Muthami, one of the complainants;
- ii) Ms. Esther Simeon, one of the complainants;
- iii) KITWASCO officials that is: Mr Geoffrey Kitonga the Managing Director, Mr. Urbanus Mutisya the Human Resource Manager and Mr. Clement Mutiso the Auditor.

MR. DAVID MUTHAMI

Mr. Speaker,

The Committee learnt that he was summarily dismissed from service on 27th September, 2019 on the following grounds, among others:

- i) Misuse/ abuse of office contrary to the terms and conditions governing his employment by breach of the code of conduct for KITWASCO staff.
- ii) Massive theft of public/ company funds amounting to Kshs. 3,912,311.
- iii) Falsification of company records through altering customer bills.
- iv) Failure to comply with chapter 6 of the Constitution, Public Officer Ethics Act, Employment Act, etc.

He stated that:

1. On 9th February 2018, there was KITWASCO Board of Directors meeting whose main agenda was to dismiss him from employment on the grounds that he provided evidence to TANATHI Water Services Board on gross financial irregularities.

He was subjected to a made- up audit report whose main aim was to silence him and cover up on corruption issues and ongoing investigations by EACC touching on financial mismanagement including irregular and fraudulent tendering, over payment of suppliers, payment of ghost suppliers, illegal increment of salaries and suspended officers who illegally resumed work using their political connections.

2. On 8th March, 2018 he received a letter requiring him to proceed on eighty eight (88) days leave and resume on 24th July, 2018 which he did.
3. On 5th September, 2018 he was issued with a letter on *Malpractice at work place* accusing him of serious irregularities resulting to financial losses of

Kshs. 3,912,311 and requiring him to show cause why disciplinary action should not be taken against him.

Annexed to the letter was an audit report whereby he was accused of being involved in irregularities resulting to financial losses that is posting fictitious customer receipts, payments made by clients being posted to other clients, adjustments to customer bills, etc.

4. He was required to respond within fourteen (14) days which he did and on 20th November 2018 he was asked provide another response and complied.
5. On 17th December, 2018, he received a letter inviting him to appear before the Board of Directors in a meeting to be held on 20th December, 2018 and this meeting had no agenda. On the meeting day, he was surprised to meet the Board Chairperson Reverend Joseph Simba, Managing Director Mr. Geoffrey Kiita, Commercial Manager Mr. Victor Muteti (who had illegally resumed work from suspension) and whose position had been advertised and Accounts Assistant II Esther Simeon.

The meeting had no quorum and the agenda of the day was a discussion of personal issues touching on Mr. Victor Muteti. No discussion was held on the alleged audit report.

6. He did not receive any communication from the meeting until 3rd May, 2019 when he was issued with a letter to appear before the KITWASCO advisory committee on 7th May, 2019 with the agenda being fraudulent activities in his work place involving theft of company funds.
7. On the same day he was issued with a report accusing him of stealing Kshs. 3,912,311. He objected and requested for the authentication of the report, noting that Kenya National Audit Office (KENAO) had conducted audits in 2016/ 2017 and 2017/ 2018 and had not raised queries on the said theft.
8. In his opinion, if the company has lost funds, the Managing Director should have disclosed this to the external auditors and this shows that the report was made up and not generated from the system audit, all meant to damage his reputation and divert attention from the previous audit reports done jointly by the County Government of Kitui and TANATHI.

The said audit reports touched on financial irregularities by senior managers that is the Managing Director, Human Resource Manager, Internal Auditor and Commercial Manager.

9. On 23rd August, 2019, he was served with a letter indicating that he was involved in fraudulent activities and the Committee had recover 15% of Kshs. 3,912,311 from his salary which was the amount lost due to his

alleged fraudulent activities and that he had been deployed to the Finance Department.

10. Since January 2018 he had no rights to the system and in September, the management changed the billing software in unclear circumstances.

He was also not given the opportunity to review the system reports but after his own inquiries, he discovered that there was no such report. The Managing Director contracted two members of staff to develop a guided report so as to silence him from blowing the whistle on corrupt activities by the senior management.

11. From 23rd August, 2019, his system rights for Accounting as Accountant Payable had also been disabled and on inquiring from the Finance Manager Mr. Josphat Kamuti, he was informed that he had some pending issues in the system only to later discover that he had been accused of leaking information after the management was summoned by the EACC.

12. He was also accused of altering his salary to award himself a salary increment yet no amount was mentioned and no dates were indicated. In his view this was meant to punish him since the EACC had visited the office for investigations.

13. On 12th September 2019 he was served with a letter on *Notice to appear before the Human Resource and General Purpose Committee*. This Committee did not exist before and he believes that it was formed to punish him on the grounds that he had information on corruption deals involving the Managing Director and others.

During this meeting, he was accused of:

- i) Irregular salary increment;
- ii) Alteration of customer bills;
- iii) Disclosure of confidential information to EACC.

He was not given the opportunity to defend himself and he was required to proceed on 3 months' suspension.

14. As per the suspension letter, he was not entitled to any salary, but would be paid house and medical allowance. However, none of these were paid during the suspension period.

15. On 27th September 2019, he was served with a letter on *Summary dismissal from service* which contained new allegations, that is, the issues raised in his suspension letter were different from those highlighted in the dismissal letter.

In his view, the KITWASCO Board of Directors unfairly dismissed him from service without following the laid down legal procedures as per the Employment Act.

16. In his view, the management has gone to great lengths to maliciously accuse him with baseless and made up allegation while he is innocent.

17. The Managing Director had on several occasions interfered with his salary by deducting unjustifiable amounts from his salary so as to punish him and silence him on corruption issues. The amounts deducted are as below:

i)	Salary arrears for 2016/2017 FY paid in August 2017	Kshs. 26,528
ii)	Salary deducted while on leave April 2018	Kshs. 14,313
iii)	Salary deducted while on leave May 2018	Kshs. 4,545
iv)	Salary deducted while on leave June 2018	Kshs. 4,545
v)	Salary deducted in September 2018	Kshs. 5,000
vi)	September salary	Kshs. 31,259
vii)	October salary	<u>Kshs. 31,259</u>
	Total amount	Kshs. 117,449

18. Further, the term of service for the KITWASCO Board of Directors has already expired and they have been acting illegally.

19. His prayers to the Committee were that:

- i) He should be reinstated back to work even if to the County Ministry of Water;
- ii) He should be paid all money illegally deducted from his salary and any other money due from the date of his suspension.

MS. ESTHER SIMEON

Mr. Speaker,

The Committee learnt that she was summarily dismissed from service on 13th December, 2019 on the following grounds, among others:

- i) Misuse/ abuse of office contrary to the terms and conditions governing her employment in breach of the Code of conduct for KITWASCO staff.
- ii) Massive theft of public/ company funds amounting to Kshs. 351,690.
- iii) Falsification of company records through altering customer bills.
- iv) Failure to comply with chapter 6 of the Constitution, Public Officer Ethics Act, Employment Act, etc.

She informed the Committee that:

1. On 17th December, 2019, the KITWASCO Board of Director unfairly dismissed her from service without following the laid down legal procedures as per the Employment Act.
2. On 5th September 2019 she received a letter on *Malpractice at workplace*. Attached to this letter was an audit report which indicated observations but no findings or recommendations. In the Audit report, she was accused of being involved in irregularities resulting to financial losses such as posting fictitious customer receipts, payments made by clients being posted to other clients, adjustments to customer bills, etc.
3. She responded to the letter but was called upon to do another response and complied and indicated that she has never participated in any of the allegations, and that in 2016 she was not informed of any irregularities by the Commercial Manager.
4. For the year in question, there was an internal audit conducted and another audit by KENAO but the allegations were not raised.
5. There were also other members of staff using the software and could access the system and make changes and adjustments. Further, accounts were reported monthly, quarterly and yearly, and these allegations had never arisen.
6. She had also been assigned to conduct tender evaluation for 2016-2017FY which took place as from 14th to 19th July, 2016 while the posting date of 15th July 2016 of which she is accused of contradicts with the exercise she was engaged in.
7. On 16th September 2018 while on leave she received a letter on *handing over before proceeding on annual leave* which required that on 23rd September, 2018 she should report to the HRM which she did and was told to hand over the following:
 - i) Cash certificate;
 - ii) Desktop computer which she unlocked and left open for use. Whoever had access to the computer during her leave is unknown to her.
8. On 17th December, 2018, she was issued with a letter to appear before the Board of Directors on 20th December, 2018. She expected to meet the full Board but this was not the case, only the Board Chairman was present and other members of staff.

9. On 3rd May, 2019 she was served with a letter to appear before the staff advisory committee on 7th May, 2019.
10. On 23rd August, 2019, she received a letter to the effect that that she would be surcharged 15% of Kshs. 351,690 was the amount allegedly lost due to her misconduct and that this letter would serve as the last warning.
11. On 27th September, 2019 she received a letter suspending her from service, a month after being issued with a last warning letter. In this letter, she was not entitled to any salary but would be paid full house allowance and medical allowance. However, she did not get any allowance for the three months she was on suspension.
12. Further, she had worked for the whole of September but was not paid her salary for that month.
13. On 17th December, 2019 she received a letter on summary dismissal from service on allegation dated 13th December, 2019, dismissing her from service based on the grounds outlined earlier in this Report.
14. Tanathi Water Services Board and the County Government conducted an audit for the financial year 2016/2017. This report had implicated various people including senior managers for misappropriation of company funds.
15. The Administrator rights to the System belong to the Managing Director and he closed her rights so that she may not know what was tampered with.
16. She has never been a signatory to any funds in the organization and no funds has ever gone missing under her custody.
17. The term of service of the KITWASCO Board of Directors has already expired and they are acting illegally.
18. Her prayers were that:
 - i) She be reinstated back to work;
 - ii) The company to pay her all the money due from the date of suspension and the unpaid salary for September, 2019.

SUBMISSIONS BY KITWASCO OFFICIALS

Mr. Speaker,

The Committee met the following KITWASCO officials: Mr. Geoffrey Kitonga the Managing Director, Mr. Urbanus Mutisya the Human Resource Manager and Mr. Clement Mutiso the Auditor.

They submitted as follows:

1. The two employees were summarily dismissed from service on account of gross misconduct involving theft of company funds through fraudulent activities among other offences such as falsification of company records through alteration of customer bills, misuse/ abuse of office contrary to their terms and conditions of employment and code of conduct, failure to comply with chapter 6 of the Constitution, Public Officer Ethics Act, etc.
2. The Board of Directors on behalf of the Principal, that is the County Government of Kitui, is entrusted with the responsibility to protect the assets of the Company and ensure no losses are incurred under any circumstances.
3. In exercising its powers, the Board of Directors found the two officers to have committed serious offences and accordingly passed a resolution to summarily dismiss them from service to deter and prevent the company from incurring further losses.
4. The Board had previously been notified of declining revenue collections despite the billed revenues showing an upward trend and this was communicated to the Managing Director through Board minutes for necessary action.
5. It was noted that the corporate image of the company was being negatively impacted due to such malpractices.
6. Further, more members of staff were getting involved in fraudulent activities involving illegal water connections and meter reversals.
7. In order to safeguard the assets and acting in the best interest of the public and protecting the company assets, the Board of Directors resolved to take disciplinary action on any staff involved in such irregularities.
8. While arriving at a decision to dismiss the two employees, the Board of Directors was guided by:
 - i) Human Resources Policies and Procedures Manual for Public Service.
 - ii) The Kitui County Government Human Resource Manual.
 - iii) KITWASCO employee Code of Conduct duly signed by the employees.
 - iv) The KITWASCO Human Resource Policy Manual.
 - v) The Employment Act.

The following disciplinary procedure was followed to summarily dismiss the employees from service:

- i) An Internal Audit Report was done indicating the findings after investigation.
- ii) They were served with a notice to appear before the Human Resource Committee.
- iii) They were issued with suspension letters to pave way for investigation.
- iv) Minutes of the Human Resource Committee meeting on recommended action were relied on.
- v) Minutes of the full Board meeting on action taken.
- vi) Minutes of the Internal Audit Committee meeting tabling the resolution.
- vii) Report from independent audit and office of the Auditor General indicating irregularities.

FINDINGS AND OBSERVATIONS

Mr. Speaker,

The Committee made the following findings and observations:

1. The Kitui Human Resource Manual states that a suspended officer is entitled to full house allowance, medical benefits and no salary. While this is the case, it emerged that the two officers were not paid their house and medical allowance for the three (3) months they were on suspension, despite their suspension letters indicating that they would be entitled to these benefits.
2. It would appear that investigations into the matter at hand were not properly conducted in line with the laid down legal procedures and supported with the necessary documents. Therefore the justification for dismissal was not clear and well supported in the opinion of the Committee.
3. KITWASCO does not seem to be keen on following the law and procedures in employment disputes and this may lead to litigation and loss of funds should the claimants cases be upheld by the labour relation courts.
4. The KITWASCO HR Manager does not seem to be fully aware of the labour laws and procedures and this may lead to ineffective discharge of duties.

RECOMMENDATIONS

Mr. Speaker,

The Committee makes the following recommendations:

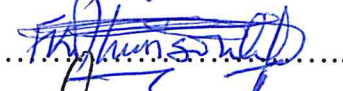
1. The Committee strongly advises both parties to try and resolve the matter out of court and where unsatisfied, they are at liberty to seek intervention of the labour relations court for any unresolvable grievances.
2. The two (2) complainants should be paid their payable dues, particularly noting the requirement that a suspended officer is entitled to full house allowance, medical benefits and no salary .
3. The KITWASCO HR Department should strictly enforce adherence to the Code of Conduct and Human Resource Manual to forestall any breaches that may lead to ineffective service delivery at the institution.
4. It is the considered opinion of the Committee that the KITWASCO HR Manager will need upskilling in the HR function in order to be able to effectively discharge his functions in the organization.
5. In view of the corruption allegations raised by the two dismissed officers, it may be necessary for the relevant County Assembly Committee, that is Public Investments and Accounts Committee, to consider deeply scrutinizing the company's audited accounts and make necessary recommendations to concerned bodies.

CONCLUSION

In conclusion, the Committee notes that it is pertinent for employers to strictly adhere to labour laws and procedures to avoid costly litigation.

Annex 1

We Members of the Committee on Labour and Social Welfare have adopted this Report and hereby affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity:-

<u>NAME</u>	<u>DESIGNATION</u>	<u>SIGNATURE</u>
1. Hon. Munyoki Mwinzi	Chairperson	
2. Hon. Charles Maema	Vice Chairperson	
3. Hon. David Munyau	Member
4. Hon Elizabeth Ndunge	Member	
5. Hon. Nicholas Mwalali	Member	
6. Hon. Boniface Kasina	Member	
7. Hon. Fredrick Nthuri	Member	
8. Hon. David Thuvi	Member	
9. Hon. Josephine Mutie	Member	
10. Hon. Anne M. Mumo	Member
11. Hon Deiys M. Mukala	Member	

Annex 2



KITUI WATER AND SANITATION CO.

P.O. BOX 341- 90200

KITUI

LEPHONE: 0701545554, 0738233330

EMAIL: kitwasco@gmail.com

KITWASCO/ADM/ 18/VOL.11 (213)
And date 27th September, 2019.

CONFIDENTIAL

Mr. David Musyoka Muthami - Revenue Officer

Date.....

Dear David,

RE: SUMMARY DISMISSAL FROM SERVICE

The above matter refers.

Further to our letters dated 17th December, 2018, 3rd May, 2019, 8th May, 2019, 23rd August, 2019, 10th September 2019, 12th September, 2019, 13th September 2019, Human Resource & General Purpose Committee meeting held on 13th September 2019 and Subsequent Board of Directors meeting held on 24th September 2019, this is to inform you that, you are hereby summarily dismissed from service on account of gross misconduct.

As advised through your letter of suspension, investigations have now been concluded and have revealed the following.

1. Misuse/ abuse of office contrary to terms and conditions governing your employment and in total breach of the code of conduct signed by yourself on 28th June, 2017.
2. Massive theft of public/ Company funds to a tune of **KSH 3,912,311**
3. Falsification of Company records and irregular increment of your Salary.
4. Breach of the code of conduct through using your position/office to unlawfully enrich yourself with personal interest appearing to conflict with your official duties.
5. Misuse of Company information and disruption of work.

6. Failure to comply with chapter six of the constitution, Public officers ethics Act, Anti-corruption and economic Crime Act and the employment Act,2007.

Please note that, matters related to criminal offences will be handed over to the relevant authorities for necessary action.



Geoffrey K. Kiita

Managing Director

Cc. Human Resources & Administration Manager

Finance Manager

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Annex 3

CONFIDENTIAL

Date.....



KITUI WATER AND SANITATION CO.

P.O. BOX 341 – 90200

KITUI

TELEPHONE: 0701545554, 0738233330

EMAIL: kitwasco@gmail.com

David Muthami Musyoka
Revenue Officer
KITWASCO

13th September 2019

Dear, David

RE: SUSPENSION FROM SERVICE

The above matter refers.

The Human Resource and General-Purpose Committee meeting today 13th September 2019, having considered your representations and investigation report on the offences touching on **irregular increment of salary, aiteration of customer bills and discloser of confidential information** and taking into account your general conduct and work performance, the offences warrants dismissal on account of gross misconduct.

Consequently, it has been decided that you be and hereby suspended from exercising the duties of your office from the date of this letter for a period of three (3) months pending finalization of your case.

You are to handover all Company office equipment, laptop, passwords and keys at your possession to Finance Manager.

While on suspension, you will not be entitled to any salary but you will be paid full house allowance and medical allowance.

You may be called upon to explain or clarify some issues touching on the above matters during this period.

Geoffrey K. Kijita
Managing Director



KITUI WATER AND SANITATION CO.

P.O. BOX 341 – 90200

KITUI

TELEPHONE: 0701545554, 0738233330

EMAIL: kitwasco@gmail.com

**David Muthami Musyoka
Revenue Officer
KITWASCO**

12th September 2019

Dear, David

**RE: GROSS MISCONDUCT INVOLVING ALTERATION OF YOUR
BASIC SALARY**

This is to acknowledge receipt of your letter dated 11th September 2019 on the above subject.

We wish to confirm that we have noted the contents therein with profound concern.

In -regard to un-procedural increment of your salary, we have evidence to the effect that at the time, you were responsible for salary preparation.

From your letter mentioned above, we have established that, you have attached audit report with baseless allegations. Further the Audited report you are referring to has no relevance to the offences you have committed.

The alleged Audit report has never been submitted to the management or Board of Directors for necessary action.

In-light of the above and taking into account that you have not given satisfactory explanation; the management holds you solely responsible for the offence you have committed.

You will be advised on the next cause of action in due course.

**Geoffrey K. Kiita
Managing Director**



KITUI WATER AND SANITATION CO.

P.O. BOX 341 – 90200

KITUI

TELEPHONE: 0701545554, 0738233330

EMAIL: kitwasco@gmail.com

David Muthami -Revenue Officer

23rd August, 2019

Dear David

RE: FRAUDULENT ACTIVITIES INVOLVING CUSTOMER BILLING

Our previous communication on the above subject refers.

On 3rd May, 2019, the Management served you with an invitation to appear before Staff Advisory Committee to respond to allegations involving irregularities leading to loss of Company Funds.

During the Staff Advisory Committee meeting held on 7th May 2019 at the Managing Director's Office, it was established that:

1. On diverse dates, you deliberately credited customer accounts without corresponding Bank transactions (funds not reflecting in the Company Bank Account).
2. The total number of transactions per customer touching on your activities was 452.
3. The Total amount involved was **KSH 3,912,311**
4. The affected banks are Kenya commercial bank, Posta, post bank, Cooperative Bank & Mpesa
5. You stated that, this could have happened within your knowledge although you were doubtful about the total amount involved. You requested the advisory committee to relook at the figures.

In-light of the above, the following disciplinary action has been undertaken:

1. You will be surcharge 15% of the total amount. This amount will be deducted every month from your monthly emoluments until the full amount is recovered.
2. You have been deployed to finance department with immediate effect. A detailed job description shall be issued to you by finance manager.
3. This letter serves you last warning.


Geoffrey K. Kilta
Managing Director

CONFIDENTIAL

Date.....



KITUI WATER AND SANITATION CO.

P.O. BOX 341 – 90200

KITUI

TELEPHONE: 0701545554, 0738233330

EMAIL: kitwasco@gmail.com

KITWASCO/ADMIN/18/VOL11(5)

5th September, 2018

David M. Muthami,
Revenue Officer,
KITWASCO

Dear David

RE: MALPRACTICE AT WORK PLACE

The above matter refers.


This is to place on your record that, you have been involved in malpractice in a number of occasions contrarily to terms governing your employment.

Preliminary investigations revealed serious irregularities resulting to Financial losses.

Attached herewith please find detailed audit report which is self-explanatory.

In-view of the above show cause why disciplinary action should not be taken against you.

Your response is expected to reach my office on or before 14th September, 2018.


Geoffrey K. Kiita
Managing Director

1.0 SPECIAL AUDIT REPORT ON RECEIPTS FOR THE PERIOD JULY 2016 TO DECEMBER 2017:

Following a report of the Audit committee to the BOD held on 23rd February 2018, the later recommended a special audit of receipts for the period mentioned above.

Below are the Observations, Findings and Recommendations following the special audit.

OBSERVATIONS:

During the special audit it was observed that;

1. Fictitious receipts were allocated to customer accounts. Such receipts were reflected as payments in Promics system/bills but there were no corresponding receipts in the bank statements.
2. Payments done by one client were allocated/posted to another customer. Where the genuine customer later comes to the office to complain, the receipt would be posted to his/her account through a credit note. The erroneous entry however remained uncorrected. *It is possible to allocate receipts to a wrong customer due to customer account been forged wrong in the bank*
3. Payments by customers for purchase of water through water bowsers were allocated to customer accounts as payments for water bills. Bowser sales is a separate revenue stream whose account is 99999 in the system.
4. Administration fees paid by new customers for connection to water was posted to existing customer accounts as payments for water bills. *Some customer one pay up system before the payment or pt reading and when properly*
5. Adjustments were made to customer bills through console an application software used to manage Windows Server. Log in ID used to make the adjustments was Admin. Bills could be reduced without any corresponding receipt or credit note.

My rights in the system were very minimal and have not operated on such an application software before. System administrator is the only person who can explain the operator behave it.

6. There were dates when receipt uploads from the bank were not done. This means that the affected customer balances are wrong. This partly explains the numerous customer complains. *when receipts are dropped and many times this was due to system failure from bank and when the error realized that it is corrected.*
7. There were instances where receipts were uploaded twice. This duplication of receipts means the customer bills reflect wrong balances and the company has lost revenue. *Errors are human and acceptable, but a reason it there was no Markie.*
8. The suspense account is not reconciled at all. The accounts office waits for the customers to come to the office with complains that their payments do not reflect in their bills. Only then do they transfer amount from the suspense account to the correct customer account.

It is important to note that postings to the suspense account affects the carrying amount of the debtors figure in the financial statement. This is because water sales postings to the suspense account should have gone to reduce the debtors/customer account balances. This inflates the carrying balances of debtors.

THE CLERK
COUNTY ASSEMBLY OF KITUI
P.O. BOX 33-90200
KITUI

06th November, 2019

Thr, Chairman
County Assembly Labor Committee

Dear Sir,

REF: APPEAL FOR REINSTATEMENT AT WORK PLACE FOLLOWING SUMMARY DISMISAL FROM SERVICE

The above matter refers.

This is to inform the County Assembly Labor Committee that I was dismissed from service on 27th September, 2019 un procedurally via a letter ref: Kitwasco/Adm/18/vol.II(213) which did not follow the employment Labour Act procedures and I request to be reinstated back with full benefits.

The Labor committee should also know that the term of service for the Kitui Water and Sanitation Company Board of Directors has expired and they Act illegally.

The issues which were discussed during the Human Resource and General Purpose Committee, the committee which has not been there before but was created to humiliate me with issues they created to intimidate me on the grounds that the EACC was on the ground investigating the top managers of the Company, and I am the one who invited them. have attach copies of the letters written to me and responses for your necessary action.

I want to disclose to this committee that as indicated in the letter massive theft of public/ company funds has never been a police case and have never received a single complainant and that the allegations were maliciously fabricated to tarnish my career reputation by people seeking to settle personal scores after they had been suspended from service for 2 years (March 2016 to December 2017) by Previous County Government and Tanathi water Services Board then due to Financial mismanagement and later sneaked in un procedurally.

The above allegations has never been discussed in my presence apart from the issue of customer bills alterations which we discussed up to the Board level and later the matter deferred to the management for lack of evidence, since as I stated earlier both a senior manager and a junior staff were paid to do data alteration in the billing software which later was switched off from use so that I may be implicated and suspended.

for directions
for Mr. Mwangi



33
COA
Pke
dms
13/11

This happened while I was on leave for 88 No. of days which I was forced to go by the Managing Director whose reason was not valid copy of the letter attached.

The managing director on several occasions has interfered with my salary by deducting unjustifiable amounts to punish me and my family so that I may remain silent to allow the management loot the Company public funds, which after a lengthy discussion he has failed to refund having provided all the documents. I therefore request this committee to demand that I be paid all my money including my salary for September and October 2019. Below is a list of the amounts deducted without official communication and without substantive reason which the Managing Director can explain.

i.	Salary arrears for 2016/17 FY paid in August 2017	ksh. 26,528
ii.	Salary deduction while on leave April 2018	Ksh. 14,313
iii.	Salary deduction while on leave May 2018	Ksh. 4,545
iv.	Salary deduction while on leave June 2018	Ksh. 4,545
v.	Salary deduction no reason given September 2018	Ksh. 5,000
vi.	September salary 2019	Ksh 31,259
vii.	October salary 2019	Ksh 31,259

Total amount refundable

Ksh117,449

Thank you in advance.

Sincerely,



David Muthami Musyoka
Tel. 0704 046699

Annex 4

ESTHER SIMEON

TEL:0727169606

26th November 2020

THE CHAIRMAN

KITUI COUNTY ASSEMBLY

LABOUR AND SOCIAL WELFARE COMMITTEE

Your Ref:CAK/9/10/Vol1V/(64)

RE: COMPLAIN FOR UNFAIR SUMMARY DISMISSAL FROM SERVICE

Respond to the invitation

This matter refers to a letter ref KITWASCO/ADM/18/vol.11(214). summary dismissal from ~~service~~

I would like to bring to your attention that the first letter (KITWASCO/ADM/18/VOL11(6) dated 5th September 2019 which was on malpractice at work place. The letter had attached audit report which showed 8no.observations, no findings and no recommendation.

The letter required that I respond on or before 14th September 2018, which I responded through a letter received on 14th September 2018.there was no respond from the management instead the managing director demanded further respond which I did on 20th November 2018.in my respond I made it clear that: -

-I never participated in all the allegations.

-in that year of 2016 I was not informed of any irregularities by my immediate Boss, the commercial manager (Mr Geoffrey kitonga) whom I was reporting directly to.

-I went on my leave on 5th September 2018 to October 2018 and still there were no such allegation even after I came back from leave.

This year were the allegations were retrieved from, was audited internally by internal auditor and externally by the external auditors (KENAO)and the allegations were not raised.

In my response letter, I needed evidence to show me how I was the one who entered the said receipts in the system taking in to considerations all these staff were using the software and could enter in the system and make changes and adjustments.

- 1.managing director -john kameta (now retired)
- 2.human resource manager-urbanus mutisya
- 3.commercial manager-geoffrey kitonga(now the MD)

4. Internal auditor-clement muinde
5. revenue officer-david musyoka
6. billing officer-joyce kithuku
7. ass billing clerk-irene mwando
8. customer care –Raphael mulanga
9. customer care-phylis mukifi
10. senior meter reader-musyimi Robert
11. system administrator –Jacob mutio

all these people had access to the system and some of them had administrator password meaning they could be able to do all sort of changes they wanted. Also note that accounts are reported monthly, quarterly and yearly, whereby such allegation did not a raise in this given year.

On 17th December 2018, I and the MANAGING DIRECTOR (mr.goeffrey kitonga) had a discussion on the same matter where he asked me to go and revisit the letter issued on 5th September 2018 and respond to him further before I appear before the board of directors. I wrote a letter which was received by the MD on 17th December 2018, shedding more light on how the whole thing was malicious.

On this letter I clearly showed a narrative list (a print out from the promics software) attached showing how one DAVID MUSYOKA posted receipts from KCB BANK and were accused on me.

It was on this letter were I explained how I was tasked with 2016-2017 tender evaluation process which commenced on 14th July 2016-19th July 2016, the posting date of 15th July 2016 of which am accused of doing posting contradicts with the evaluation dates because I was not even there, I was already in the evaluation exercise.

Secondly, on 16th September 2018 while on leave I received a letter ENTITLED HANDING OVER BEFORE PROCEEDING ON ANNUAL LEAVE AUGUST 2016. SIGNED by human resource manager.as per the letter it demanded that on 23rd of September 2016 while on leave should report to the HRM, when I reported he told me to hand over the following to commercial manager (Mr. Geoffrey kitonga).

1. cash certificate for signing-which I did and it was signed.
2. computer (a desktop) –I unlocked the password and left it open for use.

That's when I was allowed to go back on my leave.

Whoever got access to my computer as from that day until the end of my leave is unknown to me since I had handed it over. Also whatever was an urgent to be done on that computer in my absence was best known to them.

Then it was on this day 17th December 2018 when I was issued with another letter to appear before the board of directors on 20th December 2018 at 10.30am

On 20th December 2018, I went to the managing directors office where the venue was, on arrival Mr. Geoffrey Kitonga said that we were to meet with all the board members but that day only the chairman of the board (REV. JOSEPH SIMBA) turned up. However, the meeting went on with the following members present: -

1. MR. GEOFFREY KITONGA (MD)
2. VICTOR MUTETI (CM)
3. URBANUS MUTISYA (HRM)
4. DAVID MUSYOKA (RO)
5. REV. JOSEPH SIMBA (BOD chairman)
6. ESTHER SIMEON (ATT)

I had a handout to explain how malicious someone turned on me on the whole issue of receipt and not all the other concerned points listed on the letter dated 5th September 2018, the letter had so many concerns of which were of less interest to the author of the report. I had not at any given time authorized to do the following: -

1. adjustments of bills,
2. console and
3. approval of suspense account.

In the meeting I also pointed out how the system had hicks where by a customer could pay using the old acc. number and the software delete/decide to pick the five digits and assume were the new account numbers therefore giving one customer endless negative bill. (see attached bill print out for acc. 10895). All these were known to the commercial manager that they were errors which could only be corrected but again all these system errors were compiled and blamed on me in the letter. How malicious it is.

The chairman did not respond to it as I waited for his positive comment about it instead he turned all explanation down and instead started talking of work relationship with one another and the meeting ended just like that.

After this meeting there was no response from the chairman of the board only to be served with another letter on 3rd May 2019 to appear before STAFF ADVISORY COMMITTEE on 7th May 2019 at 9. am

The advisory committee went on and I was present before seven members: -

1. Mr Geoffrey Kitonga (Managing director)
2. Urbanus Mutisya (HRM)
3. Victor Muteti (Commercial manager)
4. Clement Muinde (Internal auditor)

5. Stephen Mutua (technical manager)

6. Francis Mutunga (procurement officer)

7. Josphat Kamuti (finance manager)

When the meeting started, I was at this time issued with a total sum of the amount I was accused of (KSh 351,690), this time I had carried the print outs I had previously in the meeting with the chairman of the board, ready for discussions about it, only to be told by the chair Mr. Geoffrey (MD) not to remove any of them from the envelope since he wanted me to respond to the allegations with a YES/NO and nothing more because they were not ready to listen to me.

Then I told the Meeting that I had no idea of the allegations and I knew nothing about them. Therefore, to me the response was a NO.

On 23rd August 2019 another letter was written to me when I was on my annual leave but I collected it on Monday 26th August 2019 when I was resuming on duty, on numbered points up to five, of which the staff advisory committee stated contrarily to what happened in the meeting held on 7th May 2019. The letter said that I was to undertake the following as disciplinary actions

1. to surcharge 15% of the total amount (15% of 351,690)

2. that the letter served me the last warning

without complaining further or responding in any manner I decided to keep the letter to myself and let the deductions be made.

At the end of that month August 2019, no deductions were made, i.e. the 15%.

I received with a surprise another letter on 27th September 2019 at 2pm. a letter suspending me from service.

This comes just a month after being given a last warning in that letter for surcharge of 15%, then I was wondering what happened to the previous letter and I did not do anything wrong or write to anyone about it.

In the suspension letter it stated that while on suspension I will not be entitled to any salary but to be paid full house allowance and medical allowance, this was not the case, I did not get any of the allowances for three months at home.

I want the committee to note that I worked the whole of that month of September, upto Friday 27th September 2019 and I was not paid my salary. (27th is the day I was issued a suspension letter). On enquiry from the managing director (MR Geoffrey kitonga) through a phone call, I wanted to know what happened to my salary as he knew I was present at work throughout the month and he told me to ask the financial manager mr.josphat kamuti. when I called him he told me that the human resource manager (mr arbunus mutisya) advised him not to pay me.

-For three months I didn't get my salary for September 2019 nor the allowances for three months only to receive a call from the registry clerk (on 17th dec 2019) to pick another letter from the office dated 13th December 2019 for summary dismissal from service.

-In this letter the office stated that I was issued with a number of letters of which some I have no idea of their content since they were never issued to me in the said dates (12th September and 13th September 2019).

I would like the committee to note the following:

1. There had been a continuous victimization by the managing director and the human resource manager for reasons which are not known to me.
2. All these allegations were done by two officers (victor muteti and Daniel kisangu) after they made a comeback from suspension following the audit which was done by TANATHI WATER SERVICE BOARD AND COUNTY GORVERMENT 2016/2017 which implicated them and other senior managers for misappropriation of company funds and so they did the report to cleanse themselves.



3.the company auditor was present all through these years (2016 to 2018) and had no such report, he was used to rubberstamp the report in order to look like HIS.

4. The ADMIN RIGHTS TO THE SYSTEM belongs to the managing director and he gave them to these TWO staff to do all things they wanted and CLOSED my rights down so that I may not know what was been tempered with.

5. There was no given time I have ever been a signatory to any cash in the organization. There is no cash which have ever gone missing under my hands.

6. I would like to say that, until I was dismissed from work I was honestly and devotedly performing my duties

MY REQUEST TO THE COMMITTEE

1. That the company will reinstate me back to work.

2. The company to pay me all the money due from the date of suspension and the unpaid salary of September 2019.

Lastly, through the chairman, I would like to thank you honorable committee members for your time.

Thank you.

Esther simeon

0727169606

Annex 5

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ESTHER SIMEON
TEL:0727169606

19th FEBRUARY 2020

THE CLERK
COUNTY ASSEMBLY OF KITUI
P.O BOX 33-90200
KITUI

The Chairman
County Assembly Labour Committee



2/16/2020
Forward this letter to the chair labour committee 20/2/2020

Dear sir,

REF: APPEAL FOR REINSTATEMENT AT WORK PLACE FOLLOWING SUMMARY DISMISSAL FROM SERVICE

The above matter refers

This is to inform the county assembly committee that I was dismissed from service on 17th December 2019 un procedurally via a letter Ref: KITWASCO /ADM/18/VOL11(214) which did not follow the employment labour Act procedures and I request to be reinstated back with full benefits.

The labour committee should also know that the term of service for the kitui water and sanitation company board of directors has expired and they act illegally.

I want to disclose to this committee that as indicated in the letter massive theft of public/company funds has never been a police case and never received a single complainant and that the allegations were maliciously fabricated to tarnish my career reputation by people seeking to settle personal scores after they had been suspended from service for two years by previous County Government and Tanathi Water Service Board, the due to financial mismanagement and later sneaked in un procedurally.

The above allegations have never been discussed in my presence with the board of directors because when I was invited to meet with them only the chairman turned up and the discussion which we had showed clearly that there was no evidence of such allegations and the matter was referred back to the management.

As I stated earlier that two staff a manger and a junior were paid to do data alteration in the billing software which was switched off from use so that I may be implicated and dismissed.

Thanks in advance

Sincerely

ES
Esther simeon
Tel:0727169606

*2/ Legal Clerk
F.A.A as per
note 1
20/2/2020*

100

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8

Annex 6

CONFIDENTIAL

Date.....

KITUI WATER AND SANITATION CO.

P.O. BOX 341- 90200

KITUI

TELEPHONE: 0701545554, 0738233330

EMAIL:kitwasco@gmail.com



**KITWASCO/ADM/ 18/VOL.11 (214)
And date 13th December, 2019.**

Ms Esther Syombua Simeon

Dear, Esther

RE: SUMMARY DISMISSAL FROM SERVICE

The above matter refers.

Further to our letters dated 17th December,2018, 3rd May,2019,8th May,2019,23rd August,2019,27th September 2019,12th September,2019,13th September 2019, and Subsequent Board of Directors meeting held on 30th November 2019, this is to inform you that, you are hereby summarily dismissed from service on account of gross misconduct.

As advised through your letter of suspension, investigations have now been concluded and have revealed the following.

1. Misuse/ abuse of office contrary to terms and conditions governing your employment and in total breach of the code of conduct for KITWASCO Staff.
2. Massive theft of public/ Company funds to a tune of KSH 351,690 (Three Hundred Fifty-One Thousand Six Hundred and Ninety)
3. Falsification of Company records through altering of Customer bills.
4. Breach of the code of conduct through using your position/office to unlawfully enrich yourself with personal interest appearing to conflict with your official duties.

5. Failure to comply with chapter six of the constitution, Public officers ethics Act, Anti-corruption and economic Crime Act and the employment Act, 2007. 's

Please note that, matters related to criminal offences have been handed over to the relevant authorities for necessary action.



Geoffrey K. Kiita

Managing Director

Annex 7



KITUI WATER AND SANITATION CO.

P.O. BOX 341- 90200

KITUI

TELEPHONE: 0701545554, 0738233330

EMAIL: kitwasco@gmail.com

KITWASCO/ADM/ 18/VOL.11 (214)
And date 27th September, 2019.
MS Esther Simeon - Accounts Assistant

CONFIDENTIAL

Dear Esther,

Date.....

RE: SUSPENSION FROM SERVICE

The above matter refers.

Following Staff Advisory Committee meeting held on 7th May, 2019, the Human Resource and General-Purpose Committee meeting that took place on 13th September 2019 and subsequent Full Board meeting held today 24th September 2019, having considered investigation report on the offences touching on irregular alteration of customer bills and taking into account your general conduct and work performance, the offences warrants dismissal on account of gross misconduct.

Consequently, it has been decided that you be and hereby suspended from exercising the duties of your office from the date of this letter for a period of three (3) months pending finalization of your case.

You are to handover all Company office equipment, laptop, passwords and keys at your possession to Finance Manager.

While on suspension, you will not be entitled to any salary but you will be paid full house allowance and medical allowance.

You may be called upon to explain or clarify some issues touching on the above matters during this period.

Geoffrey K. Kiita

Managing Director

Cc. Finance Manager

Human Resources & Administration Manager



Annex 8

KITUI WATER AND SANITATION CO.

P.O. BOX 341 - 90200

KITUI

TELEPHONE: 0701545554, 0738233330

FAX: 044 - 22404

EMAIL: kitwasco@gmail.com

12TH MARCH, 2021

KITWASCO/ADMIN/3/VOL1A(171)

Clerk of County Assembly,

County Assembly of Kitui,

P.O Box 694,90200

KITUI

Dear, Sir

RE: NOTICE OF INVITATION TO APPEAR BEFORE THE COUNTY ASSEMBLY COMMITTEE ON LABOUR AND SOCIAL PROTECTION ON 15TH MARCH 2021 ON THE MATTER OF SUMMARY DISMISSAL FOR MR DAVID MUSYOKA MUTHAMI AND ESTHER SYOMBUA SIMEON

The above matter refers.

The above-mentioned employees were summarily dismissed from service on account of gross misconduct involving theft of company funds through fraudulent activities among other offences.

1.0 The board of Directors mandate/ role on safeguarding Company Assets.

The Board of Directors on behalf of the Principal (County Government of Kitui) is entrusted with the responsibility to protect the assets of the Company and ensure no losses are incurred under any circumstances.

In exercising its powers, the Board of Director found the two officers to have committed serious offence and accordingly passed a resolution to summarily dismiss them from service to deter and prevent the Company from incurring further losses.

The Board had previously been notified of declining collections despite the billed revenues showing an upward trend. The same was communicated to the Managing Director through Board minutes for necessary action.

It was also noted that, the Corporate image of the Company was being negatively impacted due to such malpractices like the ones mentioned above.

In addition, more staff were getting involved in fraudulent activities involving illegal water connections and meter reversals.

2.0 Guarding the Assets.

In-order to safeguard and acting for the best interest of the public and protecting the Company Assets, the Board of Director resolved to take severe disciplinary action on any staff involved in such irregularities.

3.0 RESOLUTION

While arriving at a decision to summarily dismiss the two employees', the Board of Directors relied / was lawfully guided by the following:

- 1. Human Resource Policies and Procedure Manual for Public Service.**
- 2. Kitui County Government Human Resource Manual.**
- 3. Kitwasco Employee Code of Conduct dully signed by the employee**
- 4. Kitwasco Human Resource Policy Manual.**
- 5. Employment Act**

The above documents are attached to this report of ease of reference.

4.0 Disciplinary Procedure followed to Summarily Dismiss the Employees from service

- 1. Internal Audit Report on the findings after investigation.**
- 2. Serviced with notice to appear before the Human Resource Committee.**



3. Suspension letter to pave way for investigation
4. Minutes of the Human Resource Committee meeting on recommended action.
5. Minutes of the full Board meeting on action taken.
6. Minutes of the Internal Audit Committee Meeting tabling the resolution.
7. Report from independent audit and office of the auditor general indicating irregularities.



Geoffery Kiita
Managing Director

