



**Achieng v Scania East Africa Limited (Appeal E100 of 2023)
[2025] KEELRC 2529 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2529 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E100 OF 2023
JW KELI, J
SEPTEMBER 18, 2025**

BETWEEN

PETER OMONDI ACHIENG APPELLANT

AND

SCANIA EAST AFRICA LIMITED RESPONDENT

*(Being an Appeal from the Judgment and Decree of the Hon. C. Maundu
(CM) delivered on 18th May, 2023 in Milimani MCELRC No. E1224 of 2021)*

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. C. Maundu (CM) delivered on 18th May, 2023 in Milimani MCELRC No. E1224 of 2021 between the parties filed a memorandum of appeal dated the 17th of May 2023 seeking the following orders:-
 - a. The Judgment of the Honourable Maundu in CMEL E1224 of 2021 delivered on the 18th day of May, 2023 be set aside in totality.
 - b. The Claimant's memorandum of claim in CMEL E1224 of 2021 as contained in the record of appeal be allowed as prayed.
 - c. Costs of the appeal be awarded to the Appellant.
 - d. Any further relief that this Honourable Court may deem fit and just to award under the circumstances.

Grounds of the Appeal

2. The Honourable Trial Magistrate erred in law and fact by failing to consider the Claimant's submissions and authorities.



3. The Honourable Trial Magistrate erred in fact by failing to consider the Respondent's witness evidence with regard to whether the termination was justified.
4. The Honourable Trial Magistrate erred in law and fact by generally failing to consider the circumstances surrounding the disciplinary hearing and the fact that the hearing failed to come within the requirements of fair hearing.
5. The Honourable Trial Magistrate erred in law by failing to consider the Claimant's evidence with regard to the circumstances under which the complainant was raised and the manner in which the disciplinary hearing was conducted.
6. The Honourable Trial Magistrate erred in fact by failing to consider the provisions of the *Employment Act* with regard to termination of employment as was raised in the claimant's submissions and whether the respondent satisfied the *employment act* enroute to termination.
7. In arriving at the conclusion to dismiss the suit the Honourable Trial Magistrate erred in law by failing to consider the claim in relation to the response and the submissions on record.
8. The Honourable Trial Magistrate erred in fact by failing to analyse the evidence on record and arrived at a wrong conclusion thereby dismissing the suit by the Appellant herein.
9. The Honourable Trial Magistrate erred in law by failing to properly apply the law to the facts thereby resulting in the dismissal of the suit.

Background to the Appeal

10. The Appellant filed a claim against the Respondent vide a statement of claim dated the 10th of March 2021 seeking the following orders:
 - a. A declaration that the termination of the Claimant's employment by the Respondent was unlawful, malicious, unprocedural and an infringement on his constitutional rights.
 - b. Maximum compensation for wrongful dismissal.
 - c. Special damages
 - i. One months' notice pay Kshs. 54,000.00
 - ii. Damages for wrongful termination Kshs.648,000.00
 - iii. Interest on the total.
 - iv. Costs of the cause.
 - v. Any other and further relief this Honourable Court may deem fit and just to award under the circumstances.

(see pages 11-17 of the ROA dated the 3rd of February 2025)
11. The Appellant also filed his verifying affidavit, list of witnesses, witness statement, and list of documents with the bundle of documents attached, all dated the 10th of June 2021 (pages 18-58 of ROA).
12. The claim was opposed by the Respondent who entered appearance and filed a statement of response dated the 2nd of August 2021 (pages 59-62 of ROA). They also filed their list of witnesses; witness statement of one Rhodah Mwelu Matthew; list and bundle of documents with the bundle



of documents attached, all dated the 2nd of August 2021 (pages 63-75 of ROA). They also filed a supplementary list and bundle of documents dated the 24th of August 2021 (pages 2-4 of Supplementary ROA dated 26th March 2025)

13. The Plaintiff's/Appellant's case was heard on the 12th of September 2021, where the Plaintiff testified in the case. He relied on his witness statement as his evidence in chief, produced his documents, and was cross-examined by counsel for the Respondent Ms. Sogok (pages 99-104 of ROA).
14. The Respondent's case was heard on the same day, when the Respondent's witness, one Rhodah Mueni, testified in the case. She relied on her witness statement as her evidence in chief, produced the Respondent's documents, and was cross-examined by counsel for the Appellant Mr. Wetaba (pages 104-107 of ROA).
15. The parties took directions on filing of written submissions after the hearing. The parties complied.
16. The Trial Magistrate Court delivered its judgment on the 18th of May 2023 dismissing the Claimant's case, with costs to the Respondent (Judgment at pages 109-113 of the ROA).

Determination

17. The appeal was canvassed by way of written submissions. Both parties filed.
18. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-
"The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."
19. Further in on principles for appeal decisions in *Mbogo V Shah* [1968] EA Page 93 *De Lestang V.P (As He Then Was) Observed At Page 94*:

"I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

Issues for determination

20. In his submissions dated the 3rd of May 2025, the Appellant identified the following issues for determination:-
 - i. Who registered the complaint accusing the claimant of soliciting and receiving bribes.
 - ii. What was the evidence that the claimant solicited and received bribes.
 - iii. What advantage did the claimant confer on the alleged person that gave the bribe.
 - iv. Was the hearing conducted in a fair manner.



- v. Why was the bearer of the alleged issues one Mohammed Ebrahim uncomfortable and expressly asked to be left out of it and indicated the complaint was anonymous.
21. On their part, the Respondent identified the following issues for determination in their submissions dated 26th June 2025:
- i. Whether the Appellant’s termination was justified.
 - ii. Whether the Appellant was accorded a fair disciplinary process.
 - iii. Whether the Appellant is entitled to the orders sought in the claim.
22. The court, upon consideration of the issues addressed by the parties in appeal finds the issues placed before the parties before it for determination in the appeal to be-
- a. Whether the trial court erred in fact and law in its finding on the fairness of the termination
 - b. Whether the appellant was entitled to relief sought
- Whether the trial court erred in fact and law in its finding on the fairness of the termination
23. The grounds of the appeal stated above were all relevant on this issue. The relevant legal threshold for determination of fairness of termination of employment in claims is according to the provisions of section 45 (2) of the Employment Act to wit:- ‘45(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 employees 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.”
- To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the Employment Act (Walter Ogal Anuro v Teachers Service Commission[2013]eKLR.)
24. The burden of proving employment claims is as stated in section 47 (5) of the Employment Act to wit :- ‘5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.’
25. In the instant appeal, the appellant pleaded that he was employed as a driver and that on November 19, 2020, he was called to the respondent's office for what turned out to be a disciplinary hearing without notice. He was accused of bribery and proceeded with the hearing blindly (for lack of prior notice), denying soliciting a bribe. He was issued a summary dismissal letter on the same date (paragraph 4 of the memorandum of claim, page 12 of ROA). The appellant filed a witness statement on June 10, 2021, detailing the incident he was accused of (pages 20-26 of ROA). The appellant also produced the minutes of the disciplinary hearing on gross conduct. Additionally, he submitted the letter of summary dismissal dated November 19, 2020, stating the reason for termination was solicitation of a bribe from customer drivers (page 47 of ROA). The appellant filed an appeal against the dismissal (page 67 of



ROA). The respondent produced minutes of the appeal hearing (pages 68-69 of ROA). The appeal upheld the disciplinary panel's decision to terminate the employment.

26. The reason for termination was thus solicitation of bribe. The burden of proof of reason for termination lies with the employer under section 43 of the *Employment Act* (supra). In the statement of response, the respondent in paragraph 5 justified the reason for the termination consistent with the content of the letter of summary dismissal (pages 60-61 of ROA). During cross-examination of the appellant, the following was recorded as his evidence before the trial court – "I have seen the document for Abdisharif Abdirahman.

He got 85% and he passed.

I produced an MPESA statement (pexh 6).

On 13/11/2020, I received Kshs. 1000 from Abdisharif Abdirahman.

I did not inform the company.

I received this money.

I was busy. It is not normal for me to receive money from trainees. -10

I returned the money on the say I did appeal. It was on 1/12/2020

when the appeal was held.

I have not produced any records to how that I returned this money.

On 19/11/2020 I was informed that there were complaints I received money or bribe from Abdishariff.

I informed the company that my mobile phone received money but it was not a bribe.

I produced minutes of that disciplinary hearing.

I was not satisfied with the outcome.

I filed an appeal in the appeal I said my cellphone received money.

The appeal confirmed the dismissal."

27. In re-examination, the appellant told the trial court that he had no power to prevent anyone from sending money to his phone and that the money was not sent on the day of training.
28. The respondent called its HR business partner Rhodah Mueni as its witness before the trial court . On cross-examination she stated as follows:- "The complaint is from Mohamed Ibrahim.

He is our Sales Manager.

He was forwarding a complaint from a customer. (the court notes there is no complaint from Awale Enterprises).

We say that the money was a bribe because the sender was a trainee.

We tend to believe that the 85% marks was as a result of the bribe.

I am not aware the driver had undertaken any other course before and the trainer.

The vehicle had electronic data stored in the vehicle.

We checked the check list provided by the Claimant.

We did not do any investigations.



Peter Omondi was not issued with a notice to show cause because of the sensitivity of the matter.

The customer wanted the issue dealt with immediately. We gave him a hearing. He was called immediately for a hearing.

He was not given any time to prepare.

In the appeal the claimant alleged that he was not given time to prepare.

We gave an opportunity to argue his appeal.

It is only the assessment from that is available to check on the trainer.

We have a system in the truck. It is inbuilt. It is called SMS.

I am not 100% conversant with "Scania driver's support system".

The rating of the driver by the system is not 100%.

The scores given by the Claimant were not different from what is contained in the system.

We were concerned because the driver who passed the exam is the one who sent the money.

There is no explanation why the claimant on why he received the money. (being referred the assessment form of Abdisharif). In our ethics you are not supposed to receive anything.

If you receive you are supposed to declare. (being referred to the claimant's exhibit)

This form contains a list of drivers.

I am not sure whether this date comes out after the training.

I am not familiar with the documents.

I cannot confirm whether if we produced a document like this. We would have exonerated your chat.

It is not true we had no reason to dismiss your client.'

29. The trial court held as follows:- "In the instant case it is not in dispute that the Claimant received Kshs. 1,000/- from one of the driver's whom he evaluated, it is common ground that out of the three drivers evaluated by the Claimant only the one who paid the Kshs. 1,000/- passed the test. The Respondent did not send those driver's is the one who complained that the claimant solicited for bribes from their drivers. Therefore, in my view the Respondent had a valid reason to terminate the Claimant's employment. 12. On whether the claimant was accorded a fair hearing, it came out that a disciplinary hearing was conducted on 19 November 2020, minutes of the disciplinary hearing were exhibited in court. I find that the claimant was accorded a fair hearing." The court, on re-evaluation of the evidence before the trial court, found no basis to fault the trial court on the finding of a valid reason for termination based on the admission of the appellant having received money from one of the trainees, the only driver who passed the test and having failed to disclose the same to the employer. The employer had reason to believe the money was a bribe as held by the trial court. The court is so finding is guided by the Court of Appeal in *Ondari v National Hospital Insurance Fund* [2025] KECA 687 (KLR) the court on reasons for termination observed:- 'The appellant complained that the termination process was unfair; he also blamed the trial court for finding that the court's duty was not to verify the truth of the reasons advanced for terminating employment. According to him, the trial court's reasons are contrary to and contradict Section 45 of the Act. In several of its decisions, this Court has held that it has no supervisory role and is not required to substitute the thoughts of an employer, where the



employer has a valid reason to terminate employment and where due process has been followed.” On procedure, the Respondent produced minutes of the internal hearing and appeal before the trial court. The witness for the respondent admitted there was no notice to show cause issued as follows:- ‘The customer wanted the issue dealt with immediately. We gave him a hearing. He was called immediately for a hearing. He was not given any time to prepare. In the appeal the claimant alleged that he was not given time to prepare. We gave an opportunity to argue his appeal.’ It is thus evident that the respondent did not comply with the provisions of section 41 of the Employment Act, to wit:- ‘41. Notification and hearing before termination on grounds of misconduct

- (1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.” The provision is couched in mandatory terms. The appellant was not given notice to prepare for the hearing and appear with employee of choice of union representative. The process was in breach of procedural fairness. The appellant would thus have been entitled to notice pay under contract and under section 35 of the Employment Act . The decision of the trial court is only faulted for failing to find there was no compliance with procedural fairness.

Whether the appellant is entitled to relief sought.

30. The reason for termination was upheld as valid. An employee cannot be compensated for their own wrongs. Notice pay for lack of procedural fairness is awarded equivalent of 1 month salary KShs. 54,000.

Conclusion

31. The appeal is allowed for lack of procedural fairness only. The reason for termination is upheld as valid. The Judgment and Decree of the Hon. C. Maundu (CM) delivered on 18th May, 2023 in Milimani MCELRC No. E1224 of 2021 is set aside and substituted as follows:

Judgment is entered for the claimant against the respondent as follows:-

The termination was based on valid reasons. There was no procedural fairness.

The claimant is awarded Notice pay in lieu for 1 month salary Kshs. 54,000 plus Costs of the suit with interest at court rates from date of judgment until payment in full.

32. The costs of the appeal are awarded to the appellant.
33. Stay of 30 days granted.
34. It is so Ordered.



DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER , 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Appellant – absent

Respondent: Mwendwa h/b Makori

