



**Mwazighe v Petro Oil Kenya Limited (Appeal E051 of 2025)  
[2025] KEELRC 2568 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2568 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E051 OF 2025  
M MBARŪ, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**BERTINA MAJALA MWAZIGHE ..... APPELLANT**

**AND**

**PETRO OIL KENYA LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. E. M. Mwamuye delivered  
on 27 February 2025 in Mombasa CMELRC No. E363 of 2023)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 27 February 2025 in Mombasa CMELRC No. E363 of 2023. The appellant is seeking that the judgment be set aside and his prayers allowed on the basis that the learned magistrate erred in holding that the employment was not unfairly terminated, disregarding the law and evidence.
2. The appellant's claim was that she was employed by the respondent on 22 November 2010 as a pump attendant earning Ksh. 10,034 per month, which increased to Ksh. 25,645 over time. She worked for 13 years until 17 April 2023, when the respondent terminated her employment through summary dismissal. The reasons given for termination were that the appellant had flouted the cash handling procedures, resulting in a loss of Ksh.12, 395. The policy did not allow the appellant to hold more than Ksh.6, 000 in cash, except in cases where she made bulk sales. All money was to be deposited in the safe and recorded by the supervisor upon confirmation. The claim was that on 20 February 2023, the appellant made several sales and handed over Ksh. 5,000 in two batches of Ksh. 12,395 to the supervisor, Sila Kogo, to drop in the safe. There was no flouting of procedures as alleged. The termination of employment was unfair, and hence the appellant claimed the following:
  - a. 2 months notice Ksh.51,290;
  - b. Accrued leave days Ksh.25,000;



- c. 12 months' compensation Ksh. 307,740;
  - d. Service pay for years worked Ksh.166,693;
  - e. Pay for April 2023 Ksh. 25,465;
  - f. Certificate of service;
  - g. Costs.
3. In reply, the respondent admitted that the appellant was a pump attendant through the letter of appointment dated 12 May 2011 and that the wage was Ksh. 22,619. There were justified reasons leading to the termination of employment when the appellant failed to follow laid-down procedures on cash handling as prescribed in Petro Oil Kenya Ltd: Policies, Guidelines, and Procedures. The appellant failed to drop sales money on 20 February 2023. This led to a loss of Ksh. 12,395 on 23 February 2023. The reasons for dismissal were lawful and proper, and there was a disciplinary hearing.
  4. The learned magistrate heard the parties and held that due process was followed, and therefore, there was no case of unfair termination of employment. The claim was dismissed.
  5. The appellant submitted that the trial court's finding that there was no unfair termination of employment was in error, as there was no prior record of misconduct until the sudden termination of employment. The court disregarded the evidence and role of Sila Kogo in the cash handling procedures. Juma Waziri confirmed that all pump attendants were under the supervision of Kogo, who would receive cash from pump attendants, reconcile it, and then drop it in the safe. The station manager, Huzefa, conducted internal investigations and, on 7 March 2023, concluded that both the supervisor and the pump attendant should be held responsible. This evidence was ignored. The attribution of the entire loss to the appellant was an error.
  6. In the cases of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR and *Naima Khamis v Oxford University Press* [2017] eKLR, the courts have held that the termination of employment must meet the threshold of fairness and procedural requirements. The reasons for terminating employment must be valid, fair, and based on proper procedures.
  7. The respondent submitted that a manual was available to guide the appellant on cash handling procedures, which she ignored. A notice to show cause was issued on 17 March 2023, and in response, she stated that she had countersigned for the cash before dropping it off with Sila Kogo. They both colluded, leading to a loss of Ksh. 12,395. There was evidence that during the banking process, the respondent noted the loss incurred by the appellant.
  8. There was due process as held in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] eKLR. The appeal is without merit and should be dismissed.

### **Determination**

9. This is a first appeal. The court is required to review the record, reassess the findings and make its conclusions.
10. The appellant's case is that her employment was unfairly terminated after she handed cash to Sila Kogo to deposit in the safe, but it was later discovered to be missing. This was ksh. 12,395.
11. The respondent maintained that the appellant had found the cash handling procedures. She failed to account for Ksh.12, 395. She was invited to a disciplinary hearing leading to the termination of her employment.



12. The appellant submitted that the matter of her cash handling was investigated by the station manager, Huzefa, who concluded that both she and the supervisor, Sila Kogo, were responsible for the cash loss. She argued that both of them should have been held culpable, not just her.
13. The notice to show cause was issued to the appellant, outlining reasons supporting her side of the events. She failed to respond, resulting in a disciplinary hearing and termination of her employment. The employer is entitled to dismiss an employee through summary dismissal if they fail to follow workplace procedures, as outlined under Section 12 of the *Employment Act*. This was upheld in Kenya Airways PLC v Alex Wainaina Mbugua [2018] KECA 739 (KLR), which states that when an employee fails to follow workplace policies and procedures after being given notice to address the issue, the employer has the right to terminate employment. See Awimbo v Kenya Hospital Association t/a The Nairobi Hospital (Cause E395 of 2020) [2025] KEELRC.
14. The appellant cannot turn back and assert that her colleague and supervisor were not punished. Workplace policy binds the individual employee. Responsibility is personal and calls to render an account; the appellant failed to give satisfactory explanations of her conduct. The findings by the learned magistrate well addressed the facts and the law.

**The appeal is without merit to this extent.**

15. Regarding the claims made, notice pay and compensation are not available in cases where summary dismissal is justified.
16. On the claim for accrued leave, the learned magistrate addressed it and allowed this to be handled under Section 28(4) of the *Employment Act*. This is a correct finding.
17. Indeed, service pay is not due where the employee is subject to statutory deductions. The findings by the trial magistrate are correct and cannot be faulted in this regard.
18. There is evidence of wages earned in April 2023 to claim full pay for unjust enrichment. The trial court directed that a certificate of service be issued.
19. The appeal is without merit, and the costs claimed should be paid to the respondent.
28. Accordingly, the appeal is without merit and is dismissed. The judgment in Mombasa CMELRC No. 363 of 2023 is proper and sound. Costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

