



**Madegwa v Mudete Tea Factory Co. Ltd (Cause E028 of 2024)
[2025] KEELRC 2550 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2550 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E028 OF 2024
DN NDERITU, J
SEPTEMBER 22, 2025**

BETWEEN

MOSES MADEGWA CLAIMANT

AND

MUDETE TEA FACTORY CO. LTD RESPONDENT

JUDGMENT

I. Introduction

1. The claimant commenced this cause through Wachakana & Co. Advocates by way of a memorandum of claim dated 30th September 2024 seeking for the following reliefs -
 - a. A declaration that the termination of the claimant's employment was unlawful, unprocedural and unjustified.
 - b. Damages for wrongful termination equivalent to 12 months' gross salary at Kshs.45,212 per month amounting to Kshs.542,544.
 - c. Pay of one month's salary in lieu of notice amounting to Kshs.45,212.
 - d. An order by this Honourable court that the respondent to pay the claimant's statutory deductions to date.
 - e. An order by this Honourable court that the respondent do pay the claimant general damages for harassment and infringement of his union rights.
 - f. An order by this Honourable court that the respondent do issue the claimant with a certificate of service.
 - g. Interest at court rates on prayer (b) and (e).



- h. Any other relief this Honourable court may deem fit to grant.
2. As it is the procedure, the memorandum of claim was accompanied with a verifying affidavit sworn by the claimant and a witness statement by the claimant, a list of documents and copies of the listed documents.
3. The respondent entered appearance and filed a reply to the claim dated 31st October 2024 through Kipkorir Tele & Kitur Advocates. The respondent also filed a list and bundle of documents. The claim is denied in its totality.
4. The cause came up for hearing on 18th March 2025 when the claimant testified and closed his case. The defence was heard on 2nd April 2025 when Peter Mwambe Munialo (RW1) testified and the respondent's case was closed.
5. Thereafter, the court directed counsel for both parties to file written submissions. Mr. Were for the claimant filed written submissions dated 11th April 2025. Mr. Tele for the respondent sent to court written submissions dated 6th May 2025 via Securicor but the court record indicates that the same were not paid for and as such they are not properly on record and are of no consequence.

II. The Claimant's Case

6. The claimant's case is expressed in the memorandum of claim, the documents filed, and the written submissions by his counsel.
7. In the memorandum of claim it is pleaded that the claimant was engaged by the respondent as a general factory worker on or about 1st November 2015. He worked until 24th August 2021 when he was served with a show-cause letter for alleged neglect of duty in the maintenance of a boiler. Thereafter, the claimant was invited for a disciplinary hearing on 7th September 2021 on account of various charges as per the show-cause letter. Subsequently, he was issued with a letter of termination on 4th October 2021.
8. It is the claimant's case that the termination was unfair and unlawful as it was actuated by malice for his activities as a union leader.
9. In his testimony in court the claimant produced his filed documents as exhibits 1 to 13. He stated that he worked for the respondent for 18yrs until he was unfairly and unlawfully dismissed on 4th October 2021 on allegations of sabotaging the operations of the factory through negligence in operating a boiler. He vehemently denied the alleged neglect of duty.
10. In cross-examination he stated that although his job description was that of a general worker he mainly worked as a boiler attendant. He stated that although his letter of appointment was issued on 30th June 2014 he had joined the company in 2002.
11. He stated that on 7th August 2021 he did some maintenance worker on the boiler and exited work at about 6pm and he left the machine in good working condition. Another worker was supposed to continue working on the equipment from about 8pm.
12. He stated that he received the show-cause letter dated 24th August 2021 and responded to the same on even date denying all the allegations and charges against him. He admitted attending the disciplinary hearing on 7th September 2021 and thereafter signed the minutes of the meeting. He stated that he was not given a chance to defend himself during the disciplinary hearing.



13. He stated that he was not paid terminal dues after the dismissal. He stated that as at the time of his dismissal he had a loan with Chai Sacco wherein he was a member. He stated that he did not authorize the respondent to apply his terminal dues towards settlement of his Sacco loan.
14. On re-examination he stated that he started working for the respondent in 2002. He stated that on 7th August 2021 he worked in his usual shift from 8am to 6pm. He did maintenance work on the boiler machine. He insisted that he did not have to wait for the next worker to appear before leaving for work as his shift was over and in any event that was the *modi operadi*. He stated that he was accused of inserting cotton-wool in the boiler waterline such that it could not work. He insisted that no evidence was availed against him in that regard during the disciplinary hearing.
15. He insisted that the disciplinary hearing was not fair as he was not allowed to bring-in his witnesses or to question the witnesses who had made the allegations against him.
16. It is on the basis of the foregoing circumstances, evidence, and facts that the court is urged to allow the claim and grant the reliefs as sought. The submissions by the claimant's counsel shall be considered in a succeeding part of this judgment.

III. The Respondent's Case

17. In the filed reply the respondent denied any employment relationship between itself and the claimant. In the alternative, and without prejudice to the foregoing, it is pleaded that if any dismissal occurred, which is however denied, the claimant was dismissed in accordance with the law based on his lack of professionalism and seriousness resulting in gross misconduct.
18. The respondent pleaded the following particulars of misconduct on the part of the claimant –
 - a. Gross professional negligence in regards to company's operational requirements in the respondent's premises
 - b. Failing deliberately to take proper care of the company's equipment
 - c. Failing to be continuously present at work during working hours
 - d. Failing to properly carry out instructions as given by his supervisors
 - e. Exposing himself to the risk of dismissal
 - f. Displaying unprofessional workmanship.
19. In his evidence-in-chief Peter Mwembe Munialo (RW1) stated that he is a manager with the respondent. He adopted his filed statement dated 5th December 2024 and produced as exhibits 1 to 7 the documents filed by the respondent. He stated that the claimant was an employee of the respondent as per the letter of appointment produced as exhibit 1. He said that he joined the respondent after the claimant had been dismissed.
20. RW1 further stated that on 7th August 2021 the claimant did some maintenance work on a boiler and left it without water and pipes blocked with cotton waste. He stated that were it not that the negligence and careless mistake by the claimant was discovered on time the equipment would have been damaged.
21. He stated that the claimant was issued with a show-cause letter dated 24th August 2021 to which the claimant responded and was invited to a disciplinary hearing on 7th September 2021. Thereafter, all those who attended the hearing signed the minutes of the meeting. He stated that a shop-steward of the claimant's union attended the hearing. The claimant was subsequently terminated vide a letter dated 4th October 2021.



22. He stated that the claimant was paid his terminal dues as per the letter dated 8th November 2021 – exhibit 6 – in the sum of Kshs571,972.74 but the entire amount was applied to payment of part of a loan of Kshs741,035/= owed by the claimant to Chai Sacco.
23. On cross-examination RW1 stated that the claimant was an employee of the respondent for 11 yrs from 2003 to 2014 as a casual or on contract and then as a permanent and pensionable employee from 2014 to 2021.
24. He reiterated that on 7th August 2021 after the claimant had completed his shift those who came after him discovered that he had blocked the in-let water pipes of the boiler using cotton wool. He however admitted that none of those other employees were called as witnesses during the disciplinary hearing. He admitted that there was no mechanical report on the boiler availed in court and that no other evidence of the cotton wool waste was available.
25. He stated that the claimant did not appeal the termination to the Board of Directors of the respondent although the respondent did not inform him of that right.
26. RW1 claimed that the actions of the claimant were not only careless and negligent but also an act of sabotage. He stated that attempts to get in touch with the claimant to explain the circumstances under which he blocked the water pipes of the boiler were unsuccessful as he did answer to phone calls.
27. He stated that the dismissal was just, fair, and lawful in the circumstances.

IV. Submissions

28. Mr. Were for the claimant submitted on the following two issues for determination by the court –
 - a. Whether the respondent met the threshold of professional negligence as against the claimant?
 - b. Whether the claimant was unfairly and unlawfully dismissed?
29. In regard to the first issue it is submitted that the respondent failed to prove that it is the claimant who left or placed cotton-wool in the water-lines of the boiler as alleged and hence fell short of the principle rule of evidence that he who alleges shall prove – Sections 107 & 108 of the Evidence Act.
30. It is further submitted that by failing to avail and produce evidence of the claimant’s negligence in performance and execution of his duties the respondent failed to meet the provisions of Section 43(1) of the Employment Act. It is submitted that no evidence was called to indeed prove that the claimant was negligent as alleged.
31. On the second issue it is submitted that the respondent had no reason at all and none has been demonstrated or proved for dismissing the claimant. It is submitted that Section 45 of the Employment Act provides that an employee may only be terminated or dismissed for reasons based on his/her conduct, capacity, or compatibility, or operational requirements of the employer. In that regard it is submitted that the dismissal was without legal basis and hence unfair and unlawful.
32. It is a rather omission curious that counsel for the claimant made no comments on the reliefs sought.
33. As stated elsewhere above the submissions by Mr. Tele for the respondent were not paid for and as such they are improperly on record.



V. Issues for Determination

34. The court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by the claimant's counsel. The following issues commend themselves to the court for determination -
- a. Whether the dismissal of the claimant was unfair and unlawful.
 - b. Whether the claimant is entitled to the reliefs sought; and,
 - c. Who should bear the costs of the cause?

VI. Merits of the Cause

35. The dispute between the parties is rather straightforward as summarized in the foregoing paragraphs. The claimant was an employee of the respondent as a general worker mainly engaged in the maintenance and operation of a boiler. His last gross monthly salary is pleaded at Kshs45,212/= and the same is not objected to by the respondent. The foundation of the employment relationship between the parties is a letter of appointment dated 30th June 2014.

36. On 24th August 2021 the respondent addressed a show-cause letter to the claimant in the following terms –

Chavakali/Kapsabet Road

Box 1421 – 50300

Maragoli Kenya

Tel: 020 – 23429

E-Mail: info@mudete.ktdateas.com

Site: www.ktdateas.com

Ref: M.T.F/08/2021-2022 Date: 24/08/2021

Moses Madegwa.

General Factory Worker,

Roll No.1435

Re: Duty Negligence

On Saturday 7th August 2021 at around 6.00 pm, the Boiler operator (Mr. Shieyo) on duty at the boiler established that the operational system of boiler 2 was not in order, immediately he reported on duty. As soon as the pumps engaged, low water level alarm triggered since water was not flowing into the boiler.

Immediate evaluation of the situation ascertained that there was no water flow into the boiler. All efforts by management to trace your whereabouts bore no fruits as you were neither in your house nor did you respond the myriad phone calls on your mobile number until at about 3.00 pm on Sunday 8th August 2021 when you called the FUM.

Trouble shooting from activities up to 4:00 AM revealed a huge cotton waste was lodged just before the last non-return valve to the boiler inlet point. It was observed that the preceding strainer to the boiler inlet was not tightened (had been unbolted and loosely re-corked). Further, a review of the CCTV



footage showed that after manufacture on the afternoon of Saturday 7th August 2021, you moved out and back into the boiler area with spanners, which demonstrates that you conducted maintenance work at the boiler. There is possibly no other way that size of cotton waste could find its way there other than via a deliberate human intervention!

Investigations have confirmed that you engaged in this act of gross duty negligence and/or sabotage by deliberately blocking the boiler's water supply system by stuffing it with cotton waste. This has been corroborated by CCTV footage showing you working at the boiler and the feed pumps area on 7th August 2021 from around 1:30 pm to about 3:45 pm before leaving for the day as well as witness statements, and the Technicians' reports.

As an experienced attendant, you very well know the very high loss your act(s) above would have occasioned to the company.

In view of the above acts of gross misconduct you are hereby called upon to show cause why appropriate disciplinary action should not be preferred against you.

Your detailed response should be received within 48 hrs from the date of this letter.

R. K. Koros

Factory Unit Manager

Cc: Regional Manager – Region 7

Regional Engineer – Region 7

Asst. Shop Steward - Mudete

Directors: Abungana K. Khasiani (Chairman, Board Member), Charles K. Gunyali(V/Chairman) Geoffrey A. Luvembe, Anne S. Ndeveli, Peter Okwemba, Oliver A. Mugami, Stephen K. Maswai (Company Secretary)

37. The claimant responded to the above letter on even date and denied each and every allegation therein. Specifically, the claimant raised concern that if the said acts of negligence occurred on 7th August 2021 why then did it take the respondent so much time to address the show-cause letter to him on 24th August 2021. He complained that he had not been shown the alleged CCTV footage and the cotton waste recovered from the boiler system which allegedly connected him to the negligent acts.
38. Neither of the two parties availed the letter inviting the claimant to the disciplinary hearing but the respondent availed the minutes of the hearing dated 7th September 2021. From the minutes no witness was called to testify and the investigation report, the CCTV recording, and the cotton wool was not availed to the claimant. There is also no evidence that the claimant was informed of his right to call witnesses or to come along with a union representative. There is also no evidence that he was informed of his right to and the procedure of appealing the dismissal.
39. From the foregoing, the claimant was charged with specific misconduct of allegedly being negligent in performance and execution of his duties. In the show-cause letter reproduced above the respondent alluded to a CCTV footage and cotton wool waste as pieces of evidence obtained against the claimant. In his response the claimant asked to be shown and supplied with that evidence. From the record and the evidence in court the claimant was not supplied with the above evidence to enable him prepare for his defence. There is also no evidence that he was ever served with the alleged investigation report.
40. The letter of termination dated 4th October 2021 stated as follows –
KTDA Management Services Limited



KTDA Farmers Building/P.O. Box 30213 GPO 00100 Nairobi
Tel: +254 20 221441/2/3/4, 322 7000/1 / Fax: 254 020 2211240
E-mail: info@ktdateas.com/Site: www.ktdateas.com

REF: STF/2/W/MUD/GMRA Date: 4th October 2021

Moses Madegwa.

General Factory Worker,

Roll No.1435.

Thro'

The factory unit manager,

Mudete Tea Factory Co. Ltd,

Box 1421 – 50300,

Maragoli

Re: Termination of Services

Reference is made to a letter from the Factory Unit Manager Ref: M.T.F/08/2021-2022 dated 24th August 2021 wherein you were asked to show cause why disciplinary action should not be taken against you for duty negligence.

Further reference is made to your written defence/explanation dated 24th August 2021 and your presentation at the Mudete Tea Factory Company Staff Disciplinary Committee meeting held on 7th September 2021 whereby you could not adequately explain why you released other staff early, worked on the boiler alone yet you could not account for the presence of material blocking entry of water into the boiler.

On 7th August 2021, while on duty as the boiler attendant, you negligently performed your duty leading to the blockage of the water inlet to the boiler, a dangerous situation that posed great risk to other staff and the boiler itself. You further on the material date, released your colleagues earlier than the appointed time, did not report any incident to the management, left for home and did not respond to myriad mobile phone calls.

In view of your conduct which constitutes a serious offence, your services with Mudete Tea Factory Company Ltd are therefore hereby terminated with effect from the date of this letter.

Upon compliance with the normal clearance procedure you will be paid your terminal dues as follow: -

- a. Two (2) months' salary in lieu of notice.
- b. Pay in lieu of accrued annual leave on pro-rata basis.
- c. Service Gratuity.
- d. Less any monies that you may be owing the company.

S. Karoki

Human Resources Manager – Factories

CC: RM - 7



41. From the foregoing the court finds and holds that the respondent failed to substantiate and prove the reason for the termination and also failed to apply procedural fairness to the claimant. For a dismissal or termination to be fair an employer has to accord an employee both substantive and procedural fairness – see *Walter Ogal Anuro V Teachers Service Commission (2013) eKLR* and *Mary Chemweno Kiptui V Kenya Pipeline Company Limited (2014) eKLR* on what entails substantive and procedural fairness under Sections 41 and 47(5) of the *Employment Act*.
42. It was upon the respondent to prove that indeed the claimant was negligent as alleged. No CCTV footage or the recovered waste was availed in court. Further, the investigation report was not availed in court and no witnesses were called in support of the allegations made against the claimant. In his response to the show-cause letter the claimant requested to be supplied with the CCTV footage and the waste recovered but that was not done.
43. There is no evidence of a letter inviting the claimant to the disciplinary hearing and as such no evidence that he was informed of his rights during such hearing including the right to call and present his evidence and cross-examining witnesses called by the respondent. No evidence was called during the hearing and the claimant was not informed of his right to call witnesses.
44. The court has so far said enough in demonstrating that the termination had no merits for lack of both substantive and procedural fairness. A declaration shall issue to that effect.

X.Reliefs

45. It is the respondent's claim that all terminal dues payable to the claimant were processed and applied to settle loan arrears that were due and payable from the claimant to Chai Sacco in the sum of Kshs571,972.74. The court shall revisit this issue in a moment below.
46. The reliefs sought by the claimant are set out in the introductory part of this judgment. The first prayer is for a declaration that the termination was unlawful, un-procedural, and unjustified. The court has found as such in the foregoing part of this judgement and an order shall issue to that effect.
47. The second prayer is for "damages" for wrongful termination. However, the term used in Section 49 of the *Employment Act* is compensation. The claimant is seeking for the maximum compensation equivalent to 12 months' gross salary. The court has examined the circumstances leading to the termination of the claimant above.
48. The court has also considered the factors set out in Section 49(4) of the Act for consideration in make an award under this head. The claimant had served the respondent from about 2014 on permanent basis and as such by 2021 he had done 7yrs. However, the evidence on record is that the claimant was an employee of the respondent since 2002/2003 as a casual and or on contract. The parties did not express any intention of re-engaging. The claimant did not locate another job after the termination.
49. Doing the best that the court can do in the circumstances, an award of ten months gross pay in compensation is fair and just. This comes to Kshs45,212/= multiplied by ten making a total of Kshs452,120/=.
50. The third prayer is for one month's gross salary in lieu of notice in the sum of Kshs45,212/=. However, the contract dated 30th June 2014 provided for payment of two months' salary in lieu of notice for employees who served for more than three years as at the time of termination. Thus, the awardable amount under this head is Kshs90,424/=.
51. The fourth prayer is rather ambiguous. It seeks that the claimant be paid "statutory deductions to date". No submissions were made by counsel on this and no evidence was availed in support of the



same. If the claim is about deductions made from the claimant's pay in form of taxes and other statutory dues the same are statutory deductions that are lawful. If the deductions were lawful how then can they be refunded to the claimant? This claim shall fail for the foregoing reasons.

52. The fifth claim is for general damages for harassment and infringement of claimant's union rights. No evidence was availed in support of this claim and no submissions were made in this regard by counsel for the claimant. From the evidence on record the court cannot discern any harassment and or infringement of the claimant's rights to engage in union activities. This claim is baseless and without merit and the same is hereby denied.
53. The sixth prayer is for an order that the respondent issues the claimant with a certificate of service. A certificate of service is a right to every employee under Section 51 of the Employment Act. An order shall issue accordingly.
54. The claimant is awarded costs of the cause.
55. The respondent claimed that it processed the terminal dues payable to the claimant in the sum of Kshs571,972.74 and allegedly applied the same in settlement of a loan owed by the claimant to Chai Sacco. No evidence was availed to prove that the claimant instructed the respondent to apply or expend the said money as such. There is also no contract availed as evidence to the effect that such loan dues were recoverable from the claimant in such a manner.
56. In the circumstances, the court finds and holds that no such monies were either paid to the claimant and or expended on his instructions. The respondent without instructions and or lawful cause misapplied what it ought to have paid to the claimant and as such that the money was never paid to the claimant and or applied on his instructions. The court shall thus not take that money into account when making the final orders below. The respondent may recover the money from the Sacco if it so wishes. As far as the court can discern the said Sacco is a distinct legal entity from the claimant and the respondent with its own capacity to sue and be sued and execute its contracts.

XI. Orders

57. This claim is allowed in the following terms -
 - a. A declaration be and is hereby issued that the dismissal of the claimant was unfair and unlawful.
 - b. The claimant is awarded –
 - i. Ten months' gross salary
Kshs45,212/= per month Kshs452,120/=
 - ii. Two month's gross salary
in lieu of notice Kshs90,424/=Total Kshs542,544/=
 - c. The respondent shall issue and deliver to the claimant a certificate of service within 30 days of this judgment.
 - d. Costs of the cause to the claimant.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 22ND DAY OF SEPTEMBER, 2025.



.....
DAVID NDERITU
JUDGE

