



Richard v Haggai Multicargo Handling Services Limited (Employment and Labour Relations Cause 115 of 2018) [2025] KEELRC 2515 (KLR) (24 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2515 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 115 OF 2018
HS WASILWA, J
SEPTEMBER 24, 2025**

BETWEEN

ARITA OGETO RICHARD CLAIMANT

AND

HAGGAI MULTICARGO HANDLING SERVICES LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 10th January 2018 and prays for judgment against the Respondent for these orders: -
 - a. A declaration that the Claimant dismissal from employment was unlawful and unfair.
 - b. A declaration that the Claimant is entitled to payment of their terminal dues and compensatory damages pleaded.
 - c. An order for the Respondent to pay the Claimant his dues and terminal benefits as tabulated in the schedule.
 - d. An order of this suit plus interest hereon.

Claimant's Case

2. The Claimant avers that he was employed by the Respondent as an electrical technician-machine maintenance officer on 15th October 2015 which he served competently until 31st November 2015.
3. The Claimant avers that while in his cause of employment on 31st November 2015, one of his friends, Evans Nyakundi accompanied by a police officer, came to claim a balance of his debt of Kshs. 3,000.
4. He was subsequently summoned by the Respondent and granted permission to go sought out their differences and they went to Ruaraka Police Station where he settled the debt.



5. The Claimant avers that he resumed his duties at 3.45 pm the same day. He was informed by the co-coordinator, Mr. Evans Ouko, that he should go back home and never return to the Respondent's premises as they no longer have work for him.
6. It is the Claimant's case that his termination was verbal which violates Section 35 of the Employment Act as he was not granted an opportunity to be heard or served with a termination notice.
7. The Claimant avers that despite working diligently, the Respondent acted out of ignorance, malice and unlawfully.
8. The Claimant avers that Respondent did not give him any reason for the drastic decision taken against him.
9. Further, despite the Claimant's efforts to resolve the dispute amicably, the Respondent has failed to pay him.
10. It is the Claimant's case that the Respondent's actions offended the express provisions of the constitution, the Employment Act and the principles of natural justice and of fair labour practices and amounts to unlawful dismissal.

Respondent's Case

11. The Respondent did not enter appearance in the matter despite being served with Notice of Summons and subsequent mention and hearing notices in respect to the suit.

Evidence in Court

12. The Claimant (CW1) adopted his witness statement dated 10th December 2017 as his evidence in chief and produced his bundle of documents dated 10th January 2018 as his exhibits.
13. CW1 testified that he worked for the Respondent from January 2015 to November 2015.
14. CW1 testified that he was not given any notice or subjected to a disciplinary hearing. Further, he did not engage in any misconduct.

Claimant's Submissions

15. The Claimant submitted on two issues: whether there was substance in terminating the Claimant's employment; whether the termination was procedurally fair; and whether the claimant's prayers should be granted together with costs.
16. On the first issue, the Claimant submitted that Section 44 (1) of the Employment Act defines summary dismissal as termination without notice or with less notice than the employee is entitled to under statutory or contractual terms due to a fundamental breach of obligations. Additionally, Section 44(4) lists examples of gross misconduct justifying summary dismissal.
17. The Claimant submitted that in the course of his employment on 31st November, 2015 when a friend of his, accompanied by a police officer came to claim a balance of his debt. The Respondent allowed him to go sort out his issues with his friend and then return to work but upon his return to work, he was suddenly informed that his employment contract had been terminated.
18. It is the Claimant's submission that the circumstances that led to termination of his employment does not fall under any of the grounds for summary dismissal outlined under section 44 (4) of the



Employment Act. Furthermore, the same is not in conformity with the provisions of unfair termination within the meaning of section 45 of the Employment Act.

19. The Claimant submitted that under Section 47(5), the employee bears the initial burden of proving unfair termination, while the employer must justify the termination's validity and procedural fairness. Failure by the employer to demonstrate this renders the termination unfair. He relied in the Court Appeal decision, Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] KECA 300 (KLR).
20. It is the Claimant's submissions that the Respondent failed to defend the suit, therefore, it did not prove that the termination was fair. Additionally, the Claimant produced in court document to prove his claim for unfair termination.
21. The Claimant submitted that an employer must prove the reason for dismissal was valid such as gross misconduct and supported by evidence. The burden of proof lies with the employer to justify the grounds which in this case the Respondent failed to prove.
22. On the second issue, the Claimant submitted that for a summary dismissal to be lawful, employers must adhere to a fair process as mandated by the Employment Act and principles of natural justice. Key steps include: Conducting a thorough investigation; Issuance of a notice to show cause; Conducting a fair hearing with the right to be accompanied by a fellow employee or union representative; Record all steps, including evidence, meeting minutes, and the final decision; Notify the employee in writing of the dismissal decision, specifying the reasons; And within seven days of dismissal, submit a written report to the district labour officer detailing the circumstances, reasons, notice period, and any wages or allowances owed.
23. It is the Claimant's submissions that the Respondent did not adhere to the aforementioned steps before terminating his employment in breach of Section 41 and 45 of the Employment which mandates substantive and procedural fairness; therefore, the termination was unfair.
24. The Claimant submitted that failure to follow these procedures may render the dismissal unfair, as held in cases like Kenfreight (EA) Limited v. Benson K. Nguti [2016] eKLR, where the court ruled that lack of a disciplinary hearing made the termination unfair.
25. On the final issue, the Claimant submitted that his right to fair labour relations as outlined in the Constitution and the Employment Act were violated by the Respondent. Thus, his claim should be allowed and the reliefs sought be granted as well as costs of the suit.
26. I have examined all the evidence and submissions of the parties herein. It is true that the respondents were served and they never entered appearance of file any response. The evidence that the claimant was terminated in clear and there is no indication that he was given any opportunity to be heard before the dismissal. The claimant's case remain uncontroverted.
27. I find for the claimant and award him as follows:-
 1. 1 month salary in lieu of notice = kshs 17,000/-.
 2. 6 months' salary for wrongful termination = $17 \times 6 =$ Kshs 102,000/-
 3. Untaken leave from 2015= kshs 17,000/-.
 4. Severance pay for 3 years= $1/2 \times 17,000 \times 3 =$ kshs 25,500/-Total kshs 161,500/- less statutory deductions.



5. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgement.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

