



**Gatwiri v Kenya Revenue Authority (Cause E117 of 2023)
[2024] KEELRC 1959 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1959 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E117 OF 2023**

**M MBARŪ, J
JULY 25, 2024**

BETWEEN

ANNE GATWIRI CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The respondent employed the claimant on 27 July 2006 as a graduate trainee. Employment was confirmed on 8 February 2021 as an integrity assurance officer on permanent and pensionable terms. The claimant was last earning Ksh.198, 000 per month.
2. On 4 July 2018, the claimant attended to a consignment of tobacco. As required of her, classifiable under the Harmonized System Code 2401-20.00 of the Common Tariff and later forwarded the consignment file for further guidance.
3. On 22 October 2018, the claimant was transferred from her previous post, the consolbase CFS to a new station in the Valuation and Tariff section. At the new station, the claimant was again allocated the file for arbitration. She noticed that the consignment had never been processed for release due to an outstanding unpaid tariff of Ksh.34, 593,693 whose amount was not properly explained.
4. The claimant’s case is that the consignment had been identified as manufactured tobacco and classified under HS Code 2403.19.00 contrary to the findings of a laboratory test report which duty classified the consignment under HS Code 2401.20.00 and binding all officers. The claimant knew that a Tariff Ruling is a legal written decision which is binding on the Customs and Boarder Control Department, and all customs officers including the claimant.
5. Noting the mistake, the claimant recommended further processing and release of the consignment because the importer had made relevant payments under the tariff classification of Code 2401.20.00.

The consignment was later released and the importer granted a 100% Customs and Warehouse waiver upon release.

6. On 23 October 2020, the claimant received a letter alleging that she had been negligent in releasing the consignment unprocedural without payment of the due taxes amounting to Ksh.34, 593,694. The claimant was accused of colluding with the importer to evade tax payment, occasioning the respondent's further loss of revenue amounting to Ksh.34, 593,693.
7. The claim is that on 8 February 2021, the respondent dismissed the claimant from her employment on the alleged negligence of duty and dishonesty. The claimant could not appeal as the respondent failed to supply her with the minutes and documents to support the appeal. This resulted in unfair and unlawful termination of employment for denial of the right to fair administrative action, fair labour practices and fair hearing.
8. The claim is also that the claimant was discriminated against because out of the 4 people who underwent the disciplinary process she was the only one who was dismissed. The disciplinary process was premeditated and targeted to terminate her employment. The letter terminating employment painted the claimant in bad light as a person who aided and abetted tax evasion of Ksh.180, 649,148 and it is impossible to secure new employment within the country.

The claimant is seeking the following;

- a. A declaration that her employment was terminated unfairly;
 - b. Notice pay Ksh.594,000;
 - c. 12 months compensations ksh.2,376,000;
 - d. General damages for discrimination, violation, and breach of constitutional and labour rights;
 - e. Costs of the suit;
 - f. Full Reinstatement to work or issuance of a certificate of service;
 - g. Any other relief the court may deem fit to grant.
9. In evidence, the claimant testified that the respondent terminated her employment on 8 February 2021 through unfair summary dismissal.
 10. The claimant testified that on 4 July 2018, while working as a verification officer, she was tasked to verify and inspect a consignment that had been declared as unrefined tobacco under entry number 2018MSA6941907 by Rohivra Limited the importer. The entry was marked as unmanufactured tobacco classified under HS Code 2401.20.00 common external tariff to assess taxes payable. The respondent flagged the consignment on suspicion that it was unmanufactured tobacco classified under HS code 2403.19.00 which attracts excise duty of Ksh.7000/kg.
 11. The claimant testified that on 7 July 2018, she inspected the consignment and drew samples to the laboratory testing to determine whether the tobacco was raw or finished product to determine the applicable tariff.
 12. On 18 July 2018, the laboratory findings were sent to the chief manager, valuation indicating that the sample tested was for unmanufactured tobacco classified at HS Code 2401.20.00 as declared by the exporter. The laboratory also recommended that to fully ascertain the nature of goods, investigations and verification of the industrial manufacturing process on the use of the consignment be made and

- that the end use of the imported products be done to ensure compliance with provisions of the Excise Act and Regulations.
13. The claimant testified that the Commissioner of Customs and Border Control communicated the laboratory findings to the importer through a tariff ruling dated 24 July 2018. The claimant was also transferred from a verification officer to the Valuation and Tariff Section and again allocated the same consignment for arbitration.
 14. Upon checking the file, the claimant noted that the consignment had not been processed for release due to unpaid taxes amounting to Ksh.34, 593,693 as assessed on 31st July 2018 by Martha Musawale.
 15. On 28 June 2019, the claimant also noted that the importer had supplied all the transaction documents with laboratory reports which classified the consignment under HS Code 2401.20.00 and further processing was recommended.
 16. The consignment was released to the importer and the respondent granted 100% Customs and Warehouse waiver upon release.
 17. On 23 October 2020 the claimant was issued with a show cause notice indicating the following investigations, the respondent had discovered that she released the consignment 2018MSA6941907 unprocedural without payment of taxes amounting to Ksh.34, 593,693 which was malpractice and hence facilitated the importer to evade tax occasioning the respondent a loss of such amount. On 27 October 2020, the claimant responded to the notice and maintained that she had followed due process.
 18. On 4 January 2021, the claimant was invited to the disciplinary hearing held on 12 January 2021 for her oral representations upon which her employment was terminated through summary dismissal. She was allowed the right of appeal and requested the minutes and reports required which were not supplied and through a letter dated 12 April 2021, her appeal was rejected.
 19. The claimant testified that the entire transaction concerning the consignment was handled by 4 officers of the respondent but she was the only one victimized. All along she worked diligently in processing the same and despite her responses to the notice to show cause, there was discriminatory treatment against her.
 20. Ms Musawala got the laboratory report on the consignment and had no power to override its findings to change the handling of the consignment. Changes could only be done by the Tariffs Chief Manager at the head office. The claimant's recommendations on the file and her transfer to the Tariffs department were over a year and had to act on the matter when it came to her attention. The allegations that she allocated the file to herself were not correct since she acted in the line of duty. Her supervisor was aware of the matter and did not complain that the claimant had taken the file irregularly. The disciplinary proceedings were all along predetermined to dismiss the claimant from her employment after undertaking her duties diligently.
 21. Upon cross-examination, the claimant testified that the importer filed an appeal against the valuation ruling. There was an arbitration and a ruling delivered on 24 July 2018 and Ms. Musawala made remarks on the file and Simba System on the two (2) recommendations from the laboratory for testing of the consignment to ascertain the end use, but the importer failed to comply. Following the valuation from the tariffs unit, the two conditions were not met.
 22. The claimant testified that the respondent has the Valuation and Tariffs manual and under it, an importer who is dissatisfied with a ruling and the requirements to pay taxes has a right of appeal. On the ruling, the goods could not be released to the importer until the matter and conditions given were addressed. Rohivra Limited appealed to the valuation ruling. At the time, the claimant had been moved

to the tariffs department and she handled the same file on behalf of the respondent on 26 June 2019 she made her remarks and her ruling on the matter different from what the Commissioner for Customs had decided on 24 June 2018. The claimant noted that the two recommendations from the laboratory to be acted on by the head office were an error.

23. The claimant further testified that the consignment was assessed at ksh.34 million on 31st July 2018 and the importer did not pay when she found out that the description and laboratory ruling was under HS Code 2401.20.00 no taxes were collectable because the code allocated indicated none were due.
24. The claimant testified that she was aware of the fact that the consignment was released to the importer following which the respondent investigated the matter and on 23 October 2020 was issued with a notice to show cause to explain why she had facilitated and aided evasion of tax through the negligence of duty.
25. The claimant admitted that she was taken through the disciplinary process and allowed to respond to the allegations made against her. On 12 February 2021, she was served with a notice of summary dismissal dated 8 February 2021. She has since not been able to clear with the respondent and her terminal dues have not been paid.

Response

26. In response, the respondent's case is that they terminated the claimant in her employment lawfully and there were no violations of her rights as alleged. The claimant was serving as an officer until 8 February 2021 and was dismissed on account of negligence and dishonesty.
27. The respondent received an investigations report from the intelligence and strategic operations (ISO) department dated 25 February 2020 on the circumstances under which a tobacco consignment declared under entry number 2018MSA6941907 was unprocedurally released from FFK consolbase without payment of taxes amounting to Ksh.34 million. The report established that on 7 July 2018 while the claimant was the verification officer based at FKF console base CFS imputed a verification account indicating that the consignment declared was unmanufactured tobacco for use as raw material. However, the claimant had no justification for how she arrived at the determination since the importer is not a licensed manufacturer of excisable goods. Further verification was made without involving PVOC despite there being an online alert instructing the claimant to enjoin the PVOC in the verification and inspection of the consignment.
28. The failure by the claimant to adhere to the online instruction to enjoin the PVOC in the verification and inspection is negligence of duty and on 28 June 2019, while the claimant was working in the Valuation and Tariff section, she inputted an online message in the Simba System recommending further processing of the consignment without collection of the extra taxes as recommended by Ms. Martha Musawale. This action without complying with the recommendations given in the tariff ruling to mitigate the imminent risk of revenue loss was against the interests of the respondent and led to loss of revenue amounting to Ksh.34, 593,693.
29. The response is also that the subject file for the importer and consignment was not allocated to the claimant and there was no appeal from the importer or the clearing agent against the decision of the respondent to collect taxes. There was no appeal and the claimant could not have been allocated the file by the supervisor for arbitration and the allegations are dishonest. The entry in question was never received by the Valuation and Tariff officer in the year 2019 when the claimant acted on it as alleged. She relied on a dummy file instead of the original file which was unprocedural. There was no mistake in the identification and classification of the consignment.

30. The findings and report of ISO led to the issuance of a notice to show cause dated 23 October 2020 as the claimant was found to violate the Code of Conduct and warranted summary dismissal. The claimant responded to the notice on 27 October 2020 and was invited to a disciplinary hearing held on 12 January 2021 but her representations were found unsatisfactory leading to summary dismissal on 8 February 2021. The respondent notified the claimant to clear to allow payment of her terminal dues which she has failed to address to date. The summary dismissal was justified and lawful. She lodged an appeal which was rejected as it had no new grounds and the allegations that she was denied documents are not correct as none were requested.
31. The summary dismissal was made on merit for negligence of duty and dishonesty. The claim that there was discrimination is not correct as employment was personal and regulated under a code of conduct to which the claimant failed to adhere. Notice pay or compensation is due as this is related to a case of summary dismissal. There were no rights violations as alleged and employment was specific and unrelated to other employees. The summary dismissal being lawful, the order of reinstatement cannot be issued and the case should be dismissed with costs.
32. In evidence, the respondent called Dominic Mwebia the investigating officer in the ISO department who testified that he was involved in the investigations on the allegations that a tobacco consignment declared under customs entry number 2018MSA 6941907 was procedurally removed from console base CFS without payment of taxes amounting to Ksh.34,593,693. When the consignment was entered, there were online alerts in the Simba System which indicated that the consignment was suspected to be manufactured tobacco under tariff classification HS Code 2401.19.00 that attracts excise duty of Ksh.7000/kg. The verification officers were advised to conduct 100% verification and draw samples for confirmation of the correct tariff classification to collect Excise Duty and extra VAT.
33. The claimant drew the samples and forwarded them to the laboratory for analysis and a valuation decision was made. The laboratory report gave 2 recommendations on how the consignment was to be handled to ensure excise duty was secured. It recommended that;
 - a. Investigations and verification of the industrial manufacturing process to ascertain the use of this product as a raw material for the production of tobacco products.
 - b. Ascertain the end use of the product to ensure compliance with provisions of the Excise Act and regulations in the manufacture, sale and supply of tobacco products.
34. Mwebia testified that the importer was unable to fulfil the recommendations given by the laboratory and on 31st July 2018 the consignment was assessed for extra taxes amounting to Ksh.34, 593,693 and an online message posted in the Simba System indicating how the extra taxes were assessed.
35. On 28 June 2019, the claimant as an officer in the Verification and Tariff office then inputted an online message in the Simba System allowing further processing of the consignment without payment of the extra taxes. She stated that her decision was based on an appeal by the importer but investigations established that the importer did not make any appeal as provided for in the Verification and Tariff Procedure Manual. In the absence of an appeal, it was unprocedural of the claimant to process the consignment before payment of extra taxes.
36. Based on the investigations, there was a recommendation that the matter be addressed by human resources and institute disciplinary action as the claimant had contravened the Code of Conduct and led to the loss of revenue.
37. Mwembia testified that the letter of appeal filed by the claimant is not acknowledged by the respondent as having been received and it is not authentic. Her possession of such a letter is a further breach of the

code of conduct. Processing the release of the consignment without the original file and using a duty was not allowed and the laboratory conditions issued had not changed at the time the consignment was released.

38. The respondent also called Jackson Kimeu Kyalo the assistant manager and human resources who testified that he was involved in the disciplinary process of the claimant who was issued with a notice to show cause following an investigation over gross misconduct. Through notice dated 5 October 2020, the claimant was informed of all matters she was required to respond to relating to the release of consignment number 2018MSA6941907 from FFK console base CFS without payment of taxes amounting to Ksh.34,593,693.
39. Kyalo testified that upon investigations, it was established that the claimant was culpable and that on 7 July 2018, while working as a verification officer in FKF consolbase CFS, she inputted entry No.2018MSA6941907 for unmanufactured tobacco for use as raw material. It was established that the claimant had no justification for how she had arrived at the determination since the importer is not a licensed manufacturer of exercisable goods. It was also established that on 28 June 2019, while the claimant was in the valuation and tariff section, she inputted an online message in the Simba System recommending further processing of the consignment without collection of the extra taxes recommended by Ms Musawale. This action was contrary to the ruling and recommendations to recover extra taxes and an act of negligence and led to the loss of revenue amounting to ksh.43, 593693.
40. Kyalo testified that investigations into the matter revealed that the claimant had not been allocated the subject file and there was no appeal by the importer as alleged. The claimant could not have been allocated the file by the supervisor for arbitration as doing so was dishonest. The file for the entry in question was never received at the valuation and tariff office in the year 2019 when the claimant acted on the entry and she went ahead to rely on documents in a dummy file instead of using the original file which was unprocedural.
41. Kyalo testified that the respondent's case is that there was no mistake in the identification and classification of the contents of the consignment as alleged by the claimant. Investigations revealed that the claimant was culpable and was issued with a show cause notice dated 23 October 2020 but her responses on 27 October 2020 were not satisfactory. She was invited to a disciplinary hearing and found culpable leading to summary dismissal on 8 February 2021. The respondent invited the claimant to undertake clearance for processing her terminal dues but she failed to attend. Termination of employment was lawful and the claims made should be dismissed with costs.
42. Kyalo also testified that the claimant was allowed to file an appeal which she did but this was rejected as it contained no new grounds. A communication was issued to this effect. The alleged discrimination did not occur, employment was personal and the claimant failed to give satisfactory reasons for her gross misconduct leading to summary dismissal. There were other officers of the respondent also implicated in the investigation report. G. N. Mwangi, F.K. Gitonga and Wilson Nzoka are still working for the respondent and were moved to different departments.

At the end of the hearing, both parties filed written submissions.

Determination

43. The claimant has well outlined her case as being that, as the verification officer of the respondent, on 4 July 2018 she attended to a consignment of tobacco declared as entry number 2018MSA6941907 classified under HS Code 2401.20.00 and she forearmed it for further guidance. Samples were taken and placed with the laboratory which submitted the report dated 18 July 2018 noting that the product was specified to be unmanufactured tobacco which is obtained from various cultivated varieties and

- the hearing 24.01 covers the classification of unmanufactured tobacco for refuse. Based on the sample the declared HS 2401.20.00 is in agreement with the laboratory findings. To fully ascertain the nature of the goods, the Inspection and Testing Centre recommends as follows;
- a. Investigations and verification of the industrial manufacturing process to ascertain the use of this product as a raw material for the production of tobacco products.
 - b. Ascertain the end use of the product to ensure compliance with provisions of the Excise Act and regulations in the manufacture, sale and supply of tobacco products.
44. The claimant's case is that the importer appealed the ruling and she processed the file after moving from verification to the valuation department and agreed with the laboratory findings.
45. The respondent's case is that upon the laboratory report on consignment 2018MSA 6941907, there were two conditions given which were not met and the importer did not appeal. The extra taxes assessed at Ksh.34 million were not paid at the time the claimant released the consignment which was aiding evasion of taxes and resulting in disciplinary action and summary dismissal.
46. Indeed, upon the laboratory report on 18 July 2018, to ascertain the nature and classification of consignment 2018MSA6941907, there were recommendations for further investigations. The claimant as the verification officer was aware of these facts and recommendations, she testified at length about the laboratory report and the fact that she sought for the sample to be analyzed.
47. Following the laboratory report, on 24 July 2018, the Commissioner of Customs & Border Control wrote to the importer, M/S Rohivra Limited that the tariff classification for unmanufactured tobacco sample was tested and identified as tobacco leave heading 20.01 which covers the classification of mineral substances not elsewhere specified or included and therefore, the same classifiable under HS Code 2401.20.00 of the Common External Tariff. To fully ascertain the nature of the goods, the Inspection and Testing Centre recommends further investigations. The tariff ruling was based on the laboratory analysis.
48. During the hearing, the claimant was cross-examined at length about her role concerning processing the consignment HS Code 2401.20.00 and agreed that under the Simba System, there was a notice that the cargo be subjected to 100% verification and to draw samples which she did verify and placed the sample with the laboratory. She however did the verification in the absence of the PVOC contrary to the regulations. Her defense was that she acted on behalf of the respondent and did as required.
49. It is not contested that following the verification and laboratory report, there were two recommendations. The claimant was aware of these recommendations that the original report on classification as HS Code 2401.20.00 was valid pending fulfilment of the two conditions.
- There is no record of such fulfilment.
50. The valuation and tariffs office directed that taxes should be collected under the tariff recommended as HS Code 2401.19.00 for Ksh.34, 593,693.
51. The importer, Rohivra Limited requested to cancel the entry on the basis that they could not afford the taxes but this was rejected by the Head Verification Officer, Pauline Ngige mapped in the system as P/No.6435.
52. In June 2019, the claimant was noted in the system as P/No.6076 stationed in the valuation and tariff office. The ISO investigations revealed that she acted on an appeal reviewed the laboratory recommendations and processed the entry. It was noted that the clearing agent had been changed which

was unprocedural but the head of the verification officer noted as Robert Odessa P/No. 6925 issued the release order and Wendy Kithia P/No.9162 approved the physical removal of the consignment.

53. Put to task about the appeal by the importer that the claimant acted upon, she testified that;
- The original file that I arbitrated on contained original documents that included an appeal letter from the importer made against an earlier valuation ruling by Ms. Martha Musawale vide message no.2018MSA11855201. ...
- I made the ruling based on the evidence produced to me confirming that the declared product is Unmanufactured tobacco; and is, classifiable under HS Code 2401.20.00 ... the product samples were tested and analysed by the laboratory and a report Ref: ITC/SAMP/055418 dated 18/7/2018 was given in this regard, an officer attached to the laboratory, Mr Stanley Mwangi confirmed of the laboratory findings that the samples tested are classifiable under HS. CODE 2401.20.00 ...
54. The claimant admitted that she had no capacity in her position to review the ruling of the senior officer and the recommendations made by the laboratory. As late as June 2019 when she alleged to have received the appeal from the importer, she reverted to the laboratory report of 18 July 2018 without confirmation as to whether the subject importer had complied with the given conditions.
55. Called to show cause why disciplinary action should not be taken against her, the claimant reiterated her conduct and the fact that she relied on the report dated 18 July 2018 upon moving to the verification and tariffs office on 28 June 2019 to have the consignment 2018MSA6941907 released on the basis that this was classified as HS Code 2401.20.00
56. The claimant failed to justify how she arrived at her decision to release the consignment as the importer was not a licensed manufacturer of exercisable products. The claimant argued that under the East African Community Customs Management Act and the Kyoto Convention and her job description, her primary duty of verification was to conduct physical verification of the actual goods as found within the customs area and confirm whether the goods entered agreed with the description declared. However, this role under the law and practice is not what the claimant was required to account for. Her conduct of release of goods under an alleged appeal by the importer was in question. Moving from the verification officer to the valuation and tariffs officer should have allowed the claimant the latitude and knowledge that his particular consignment, even though appointed as the arbitrator had been flagged and required meeting the given conditions. She failed to address this.
57. Indeed, the claimant in the written submissions has relied on the case of Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Limited [2013] eKLR to assert that before termination of employment, the employee must be accorded both procedural and substantive justice. In this case, the respondent issued the claimant with a notice to show cause on 23 October 2020 and she filed her responses on 27 October 2020. Additionally, she was invited for a disciplinary hearing on 12 January 2021.
58. As outlined above, the claimant, called to account for her conduct in the handling of consignment 2018MSA6941907 from verification to release failed to give satisfactory reasons. She acted in a matter she was well aware that there were conditions to be addressed before the consignment was released leading to a loss of revenue by the respondent. Moving from the verification office to the valuation and tariffs office did not justify the claimant's circumvention of the applicable procedures. In any case, such should have given her the advantage to address the lapse in the importer meeting the set conditions.
59. In the case of *Matsesho v Newton (Cause 9 of 2019)* [2022] KEELRC the court held that in proving the reasons for termination of employment under section 43 of the *Employment Act*, the employer

is entitled to plead matters that are genuinely believed to exist and which would, if they were in fact in existence, provide valid grounds for terminating employment. In other words, situations may arise where the employer genuinely believes that a ground for terminating an employee has arisen when in fact it has not. For example, in this case, the claimant acted on an alleged appeal from the importer which appeal does not exist. Called to account for her conduct, she could not produce such an appeal. The fact that the claimant filed this document in her pleading after her exit from employment further confirms untoward conduct on her part that she had a vital document of the employer outside her employment. The fact of the investigations by ISO is not challenged in any material way. The respondent had strong preliminary evidence pointing to the claimant having committed various offences against the property of the respondent leading to a loss of revenue amounting to ksh.34 million.

60. The respondent called evidence from the investigating officer who demonstrated the matters facing the claimant at the time she was invited to the disciplinary hearing. These investigations made clear that the claimant was culpable.
61. Hence, in leading to the summary dismissal on 8 February 2021, the respondent was able to show that it acted on available evidence out of a genuine belief that the claimant had committed gross misconduct and thus valid grounds.
62. This position is reiterated in *Simba Corporation t/a Acacia Premier Hotel v Omondi (Appeal E007 of 2023)* [2024] KEELRC that Section 43(2) of the *Employment Act* specifically states that the reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
63. In *Charles Musungu Odana v Kenya Ports Authority* [2019] eKLR the court held that;

It is now clear that the burden placed on an employer by Section 43 of the *Employment Act*, is to establish a valid reason that would cause a reasonable employer to terminate employment.
64. The standard of proof required of the employer is that of a balance of probability, not beyond a reasonable doubt, and all the employer is required to prove are the reasons that it "genuinely believed to exist," causing it to terminate the employee's services. See *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR. In *Inda v Kentaste Products Limited (Appeal E098 of 2023)* [2024] KEELRC the court in analyzing the burden placed upon the employer relied on the Court of Appeal in the case of *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike* [2017] eKLR which held that;

Under Section 43 of the Act, the onus is on an employer to prove the reason or reasons for the termination, failing which the termination shall be deemed to be unfair. The test is, however, a partly subjective one in that all an employer is required to prove are the reasons that he "genuinely believed to exist," causing him to terminate the employee's services. In the present case, it seems quite clear from the evidence on record that KPLC believed, and had ample and reasonable basis for so believing, that Wasike had attempted to steal cable wire from KPLC stores which he was in charge of. ...
65. The court finds that the decision by the respondent to dismiss the claimant was for genuine and justified reasons. She was taken through the due process and allowed to file an appeal which was assessed and dismissed. The materials that were alleged as not shared to support the appeal cannot apply to negate the findings that the summary dismissal was justified.

Notice pay and compensation are reliefs not available to the claimant

66. The claimant has raised the case that she was discriminated against by the respondent. The basis is that the transaction leading to summary dismissal involved other officers who are still working for the respondent. That the entire disciplinary hearing was premeditated towards termination of employment.
67. As correctly submitted by the respondent, the employment of the claimant was personal and she was invited to address her conduct. Employment is a personal relationship hence once trust is lost, that paramount. The claimant does not deny handling the consignment in issue. Upon investigation, she was found culpable. To assert that there was discriminatory treatment is farfetched in the given circumstances. Whatever action was taken against the other officer, called to account, the claimant failed to give satisfactory responses.
68. The court finds no matter of discrimination to justify the claim for payment of damages.
69. The claimant is also seeking an order or reinstatement and in the alternative, issuance of a certificate of service. Having addressed the issues outlined above, termination of employment was found justified, and an order of reinstatement was removed. However, at the end of employment, a certificate of service is due under the provisions of Section 51 of the Employment Act. The respondent invited the claimant to undertake clearance to allow for the processing of her terminal dues and issuance of the certificate of service. This is a reasonable direction and the claimant should abide by and attend to the shop floor.
70. On costs, the claim addressed above, each party should bear its costs.
71. Accordingly, the claim is found without merit and is hereby dismissed. Each party is to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 25 DAY OF JULY 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine.

..... and