



**Mabatuk v Safaricom PLC (Employment and Labour Relations Cause E047 of 2023) [2025] KEELRC 2628 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2628 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E047 OF 2023  
AN MWAURE, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**WYCLIFF MABATUK ..... CLAIMANT**

**AND**

**SAFARICOM PLC ..... RESPONDENT**

**JUDGMENT**

1. The Claimant commenced this suit via Memorandum of Claim dated 21<sup>st</sup> September 2023.

**Claimant's case**

2. The Claimant avers that he was employed by the Respondent as a BSS Engineer of Rift Western Region on 15<sup>th</sup> May 2014, and he was placed on probation until 22<sup>nd</sup> June 2015, when he was confirmed.
3. The Claimant avers that he was earning a gross salary of Kshs. 80,000 = per month, and his salary was to be reviewed on 1<sup>st</sup> July each subsequent year.
4. The Claimant avers that on 27<sup>th</sup> May 2022, in the course of his employment, an incident involving missing site batteries occurred in the Busia cluster, specifically at Apegei, Kiganjo-Lugulu, Buhuyi, and Adongosi sites.
5. Between 15<sup>th</sup> and 27<sup>th</sup> May 2022, the Claimant avers that 96 batteries were recovered, allegedly sold by former Linksoft technicians with the Claimant's knowledge and tacit approval. Despite being responsible for supervising and safeguarding the batteries stored at Kiboswa MSR for disposal, the Claimant reportedly failed to take any action.
6. The Claimant avers that he was issued with a letter from the Respondent's Senior Manager, Employee and Labour Relations officer on 14<sup>th</sup> June 2022, requiring him to explain why disciplinary action should not be taken against him on the allegation of misappropriation of company property.



7. The Claimant avers that he responded to the letter on 17<sup>th</sup> June 2022, giving a detailed explanation of his whereabouts, duties and actions on the particular dates of misappropriation of the said company property claimed he did not violate the Company Assets Disposal Policy and Safaricom Code of Conduct and that no disciplinary action should be taken against him.
8. The Claimant avers that he attended a disciplinary hearing on 7<sup>th</sup> July 2022 on the allegation of misappropriation of company assets, in which it was alleged that he failed to appropriately supervise Linksoft Technicians as per the solar project scope that required recovered batteries from sites to be taken to Kiboswa MSR for safe storage awaiting reuse sale.
9. The Claimant avers that the Respondent's disciplinary organ in its report held that no money exchanged hands between the Claimant and Linksoft technicians exonerating the Claimant from the allegation and only found the culpability of the Claimant to the extent of wilfully neglecting to perform his work and yet the Claimant gave an account of his duties, responsibilities and obligation during the hearing which exonerated him from the said allegations of misappropriation.
10. The Claimant avers that he was summarily dismissed from his job, but he appealed against his dismissal, which was dismissed and the decision of the disciplinary panel was upheld.
11. The Claimant prays for:
  - a. A declaration that his dismissal and or the termination of his employment was wrongful, unfair, unconstitutional and unlawful, hence null and void ab inito.
  - b. An order for reinstatement or re-engagement of the Claimant to employment with back pay and with no loss of seniority, privileges, salaries, allowances and benefits.
  - c. In the alternative to (b) above, back pay from the date of the termination up to date of judgment
  - d. Compensation for unlawful and unfair termination equivalent to his 12 months' gross salary, calculated as:  
$$12(\text{months}) \text{ Kshs. } 511,322.58(\text{gross salary}) = \text{Kshs. } 6,135,870.96$$
  - e. In the alternative to (b) above and in addition to (c) and (d) above, one-month payment in lieu of notice
  - f. An order directing the Respondents to remit all the statutory deductions on the Claimant's salaries to their respective accounts for the duration he was unfairly dismissed.
  - g. An order for compensation by way of exemplary damages of Kshs. 10,000,000 to the Claimant for unfair termination.
  - h. An order for compensation by way of punitive damages of Kshs. 20,000,000 to the Claimant for brazen termination
  - i. Costs of the claim
  - j. Interest at court rates on all the payments above if awarded, as from the date of filing of the claim until payment in full.
  - k. Any other or further relief that the court may deem fit to grant in the interest of justice



## **Respondent's Memorandum of Response**

12. In opposition to the Memorandum of Claim, the Respondent filed a Memorandum of Response dated 18<sup>th</sup> April 2024.
13. The Respondent maintains that its decision to terminate the Claimant's employment was justified, asserting that the process adhered to both substantive and procedural fairness requirements.
14. The Respondent avers that the Claimant, a BSS Engineer, was responsible for overseeing the Solar sites project in the Busia Cluster, including the recovery and safe storage of decommissioned batteries.
15. The Respondent avers that investigations were done and revealed that 96 batteries went missing and were sold illegally under his supervision, with allegations that he created an unauthorized holding site and failed to properly manage technicians.
16. Although he was later exonerated from receiving proceeds from the sale, the Respondent avers that the disciplinary panel found him culpable of gross negligence and misconduct.
17. The Respondent avers that the termination followed due process, including issuance of a show cause letter to the Claimant, disciplinary hearing, and appeal, thus maintains that the Claimant is not entitled to any relief sought in his claim.
18. The Respondent urged this Honourable Court to dismiss the claim with costs.

## **Claimant's evidence in court**

19. CW1, the Claimant, adopted his witness statement dated 21<sup>st</sup> September 2023, along with supplementary statements dated 30<sup>th</sup> April 2024 and 12<sup>th</sup> July 2024. He also adopted the list of documents dated 21<sup>st</sup> September 2024 and the further list dated 12<sup>th</sup> July 2024, marked as exhibits 1 to 35, excluding exhibit 29 as his evidence in chief.
20. In cross-examination, CW1 confirmed he was summarily dismissed while earning a salary of Kshs.511,322.58 =, comprising basic pay, commissions, and allowances. He acknowledged filing and later withdrawing CM ELRC No. 106 of 2023. CW1 admitted awareness of the missing site batteries and confirmed that investigations and a report were conducted. He stated that he received a show cause letter dated 14<sup>th</sup> June 2022, alleging failure to supervise Linksoft technicians, resulting in a loss of Kshs.2,625,365 =, and responded by the 17<sup>th</sup> June 2022.
21. Following dissatisfaction with his explanation, CW1 stated that he was invited to a disciplinary hearing via a letter dated 27<sup>th</sup> June 2022, which he attended on 7<sup>th</sup> July 2022 with a colleague, Samuel Mwaniki. He stated that he was allowed to present his case and was later issued a termination letter dated 1<sup>st</sup> August 2022, citing failure to supervise and creation of an unauthorized battery site. He appealed the decision within the stipulated 10 days but was informed on 20<sup>th</sup> January 2023 that the appeal was unsuccessful. CW1 noted that disciplinary hearing attendees were recorded in minutes, but he was unable to access the recordings despite requesting them.

## **Respondent's evidence in court**

22. RW1, Samson Ndili, the Respondent's Security Manager, adopted his witness statement dated 4<sup>th</sup> July 2024 together with the list of documents dated even date and supplementary list of documents dated 4<sup>th</sup> November 2024 marked as exhibits 1 to 33, his evidence in chief.



23. In cross-examination, RW1 confirmed he had resigned and now works in security consultancy. He stated that while the security team handled site access and battery transfers, engineers like the Claimant were responsible for supervising service partners. He had no direct dealings with the Claimant and relied on information from Mr. Ratemo, including call records from 16<sup>th</sup> to 22<sup>nd</sup> May 2022, though none existed for 22<sup>nd</sup> May 2022. RW1 participated in the disciplinary investigations but could not recall all attendees, only confirming Mr. Odhiambo Ooko's presence.
24. In re-examination, RW1 stated that the process of the solar upgrade and the engineers were in charge of every site.
25. RW2, Odhiambo Ooko, the Respondent's Senior Manager, Employee and Labour Relations officer, adopted his witness statement dated 4<sup>th</sup> July 2024 as his evidence in chief.
26. In cross-examination, RW1 stated that he participated in the disciplinary hearing but not in the appeal, which was conducted administratively by senior management without a physical hearing or recorded minutes. He confirmed that the Claimant was issued a notice to show cause for failing to supervise and account for lost batteries. RW1 also stated that two termination letters were issued on the same day, both citing unauthorised creation of battery holding sites. He noted that there was no email or formal authorization from the Claimant regarding the transfer of batteries from the Busia site, which, according to procedure, required management approval.
27. The court directed parties to put in their respective written submissions.

#### **Claimant's submissions**

28. The Claimant submitted that the Respondent did not justify in terminating him and relied on sections 43(1) and 45(1) and (2) of the *Kenya Employment Act 2007*. He relied on the case of Wanyonyi V Principal Kamau Secondary School and another [2024] KEELRC 648 (KLR), where the court held that under section 47(5) of the *Kenya Employment Act*, the employee bears the burden of proving unfair termination by establishing a prima facie case that the dismissal did not meet the legal standards outlined in section 45. This provision prohibits employers from terminating employment without a valid and fair reason and without following due process. A reason is considered valid and fair if it pertains to the employee's conduct, capacity, compatibility, or the employer's operational requirements.
29. The Claimant argues that the Respondent failed to justify the termination of the Claimant's employment, issuing two conflicting termination letters with inconsistent allegations that were not previously raised in the Notice to Show Cause. The Claimant submitted that his role did not include supervising third-party technicians, and the accusations were unrelated to his assigned duties. The shifting grounds and lack of procedural consistency undermined the credibility of the termination. As established in *Paul Nyamai Kimanga & another v Pestlab Limited* [2017] KEELRC 1547 (KLR), a valid and fair reason must be true and relate to the employee's conduct, capacity, or the employer's operational needs. The Respondent's failure to meet this threshold rendered the dismissal arbitrary and substantively unfair.
30. The Claimant relied on the case of *Nicholus Muasya Kyula V Farmchem Ltd* [2012] KEELRC 125 (KLR), where the court held that employers must conduct proper investigations and clearly communicate the grounds for termination. The Claimant submitted that the Respondent failed to meet this standard by relying on an investigation report based on statements from individuals responsible for asset security, including one who admitted to selling batteries but was not called to testify, denying the Claimant a fair chance to respond. The Notice to Show Cause cited only failure



to supervise technicians, yet the termination was based on unrelated and undisclosed allegations. This violated the principles of natural justice and procedural fairness, rendering the dismissal legally defective.

31. The Claimant submitted that the notice for disciplinary hearing dated 27<sup>th</sup> June 2022 indicated that the hearing was scheduled for 30<sup>th</sup> June 2022, as it was sent by Mr. Odhiambo Ooko, the Respondent's senior manager for Employee and Labour Relations. The Claimant also submitted that the Notice to Show Cause letter dated 14<sup>th</sup> June 2022 only stated one allegation against the Claimant, which was failure to supervise the Linksoft Technicians. The Claimant relied on the case of *Mulama V Cezam & Associates Limited* [2024] KEELRC 1173 (KLR), where the court stated that a disciplinary hearing must be preceded by a clear notification that the employee is accused of misconduct and express invitation to a disciplinary hearing.
32. In *Kenya Plantation and Agricultural Workers Union V Eastern Produce (K) Limited* [2022] KEELRC 1302, the court held that the Respondent failed to uphold procedural fairness by not allowing the Claimant to cross-examine witnesses or fully present his side of the story. Simply inviting an employee to a disciplinary hearing does not satisfy the requirements of due process; the employee must be given a genuine opportunity to respond to the allegations and defend themselves. The Claimant contended that the Respondent failed to present any witnesses for cross-examination during the disciplinary hearing and did not provide minutes of the proceedings or the appeal, thereby undermining the transparency and fairness of the process.
33. The Claimant submitted that he is entitled to the relief sought together with costs and urged this Honourable Court to allow the claim as prayed.

### **Respondent's submissions**

34. On the other hand, the Respondent submitted that it followed a fair and lawful procedure prior to terminating the Claimant, in full compliance with section 41 of the *akn ke act 2007 11 Employment Act*. The disciplinary process included a detailed investigation, issuance of a Show Cause letter, receipt of the Claimant's written response, an oral hearing with representation, a reasoned decision with a right of appeal, and communication of the appeal outcome. These steps, according to the Respondent, meet and exceed statutory requirements. Citing the case of *Postal Corporation of Kenya V Andrew K. Tanui* [2019] KECA 489 (KLR), the Respondent argues that all four elements of procedural fairness, including clear explanation of allegations, reason for contemplated termination, right to representation, and opportunity to be heard, were satisfied.
35. The Respondent submitted that the Claimant's assertion of being denied a fair hearing is unsupported by the evidence. He was informed of the core allegations against him, including technician statements and tracking data, and was given a fair opportunity to respond. The disciplinary process need not replicate a court trial, and the Claimant neither requested additional documents nor the presence of witnesses. Therefore, his right to a fair hearing was upheld, and the termination complied with the procedural requirements of sections 41 and 45 of the *akn ke act 2007 11 Employment Act*.
36. The Respondent submitted that the Claimant's termination met the test of substantive fairness under section 43(2) of the *akn ke act 2007 11 Employment Act*, as it was based on a genuine belief in his misconduct. The Claimant was accused of failing to supervise third-party technicians, authorizing the illegal sale of 96 batteries, and creating an unauthorized battery holding site, leading to a loss of Kshs.2.6 million to the Respondent. These allegations were supported by technician's admissions and circumstantial evidence, including vehicle tracking data. Although direct proof of bribery was lacking, the Respondent reasonably concluded that the Claimant's negligent oversight facilitated the



- theft. As affirmed in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR), an employer needs only to prove that it genuinely believed the misconduct occurred on a balance of probabilities. The Claimant's role as a BSS Engineer inherently included oversight of outsourced technicians, contrary to his denial, and his failure in this duty justified the termination.
37. The Respondent demonstrated that the Claimant, despite denying supervisory responsibility, was in fact accountable for overseeing third-party technicians during the battery upgrade project. His job profile included contractor control, and he admitted under oath to approving battery Re-Use Plans and supervising MSPs. Multiple statements, including his own and those from disciplinary proceedings, confirmed his role in directing contractors. His later attempt to redefine his duties as limited to "quality control" lacked documentary support and contradicted earlier admissions. The evidence showed he was the primary Safaricom officer responsible for ensuring compliance and safeguarding assets, making his claim of non-responsibility untenable.
38. The Respondent submitted that the Claimant's reliance on a BTS Security SLA to deflect responsibility for the battery theft is misplaced and unsupported by evidence. He failed to produce the SLA document and misrepresented its scope, which only tasked the security team with receiving decommissioned batteries, not supervising contractors. The disciplinary findings and Battery Re-Use Plan confirmed that the Claimant had a duty to coordinate with security and oversee battery handling. His absence during critical operations and failure to raise alarms enabled the unauthorized diversion of assets. The Respondent followed due process under the *Kenya Employment Act 2007*, and the Claimant's constitutional and contractual rights were not violated.
39. The Respondent submitted that the Claimant is not entitled to the reliefs sought and urged this Honourable Court to dismiss the claim.

### **Analysis and determination**

40. The court has considered the pleadings on record together with the rival submissions from both counsels; the issues for determination are as follows:
- a. Whether the Respondent summarily dismissed the Claimant fairly and lawfully.
  - b. If(a) above is affirmative, whether the Claimant is entitled to the relief sought
  - c. Who should bear the costs of the suit?
41. The threshold for fair termination was firmly established in *Walter Ogal Anuro V Teachers Service Commission* [2013] KEELRC 386 (KLR) and *Mary Chemweno Kiptui V Kenya Pipeline Company Limited* [2014] KEELRC 905 (KLR), where the courts held that a valid dismissal must meet both substantive justification and procedural fairness. These principles are codified under sections 43 and 41 of the *Kenya Employment Act 2007*, which require the employer to have genuine and fair reasons for termination and to follow a fair process that includes notifying the employee of the allegations and giving them an opportunity to respond.
42. In this instant case, the Claimant was accused of failing to supervise the technicians on the solar project that required recovered batteries from sites to be taken to Kiboswa MSR for safe storage awaiting re-use sale. The Respondent issued the Claimant with a notice to show letter, which he responded to and was invited to a disciplinary hearing to defend. Although the Claimant was cleared of receiving any proceeds from the sale of the stolen batteries, the disciplinary panel still recommended his termination. He subsequently appealed the decision, but the appeal was unsuccessful, and the termination was upheld.



43. In *Postal Corporation of Kenya V Andrew K. Tanui*(supra), the Court of Appeal cited the case of *Pius Machafu Isindu V Lavington Security Guards Limited* [2017] eKLR, where the court stated as follows:

“There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41, requiring notification and a hearing before termination. The Act also provides for most of the procedures to be followed, thus obviating reliance on the *akn ke act 1963 46 Evidence Act* and the *akn ke act 1924 3 Civil Procedure Act Rules*. Finally, the remedies for breach set out under section 49 are also fairly onerous to the employer and generous to the employee. But all that accords with the main object of the Act as appears in the preamble:

“..to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees..”

Those provisions are a mirror image of their constitutional underpinning in Article 41, which governs rights and fairness in labour relations.

14. Section 47 (5) of the Act provides for the procedure to be followed in matters of complaints of unfair termination as follows:

“(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 of the termination of employment or wrongful dismissal shall rest on the employer.” [Emphasis added].

So that, the appellant in this case had the burden to prove, not only that his services were terminated, but also that the termination was unfair or wrongful. Only when this foundation has been laid will the employer be called upon under section 43 (1): “to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.” [Emphasis added].

44. The Claimant was issued a Notice to show cause dated 14<sup>th</sup> June 2022 and he was to show cause why disciplinary action would not be taken against him for authorising the MSP technicians to sell batteries instead of having them stored safely at Kibiswo MSR for reuse or resale. He was further informed that his action resulted in the loss of Kshs.2,625,356 16 to the Respondent and he was a beneficiary of Kshs.44,000 = received on 18<sup>th</sup> May 2022 and 42,000 = received on 23<sup>rd</sup> May 2022.
45. The Claimant vide his response ot the Notice to show cause dated 17<sup>th</sup> June 2022 denied he authorised the sale of the batteries of the Busia Site and in particular Apegei site batteries, Andungosi site batteries and Lugula site batteries totalling to 4 banks.
46. He states that the responsibility to ensure safety of the assets was on the security team. Claimant was Engineer BSS. He says he was neither informed by the contractor that they handed the batteries to the



security team. The security team had the mandate to hand them over to Linksoft (MSP) Contractors for storage in the designated site. He therefore states he was not responsible of the batteries storage but the security team was responsible.

47. The court observed that in the additional information generated by the Respondent Exhibit RE:17 (undated) it was stated that the team leader Patrick Limo did not copy the security team about the Re-used batteries neither did the Claimant. The court was not upraised why the team leader was not questioned and yet he also seemed to have been in the picture and only the Claimant was put through disciplinary process.
48. The claimant's defence is that he was not in charge of the safety of the assets anyway as there was a Security Team. The Respondents did not produce any document to clarify what was the exact role of the claimant or his clear job description. It is therefore not in the preview of the court the exact role the Claimant was to play in the swapping of the batteries in question.
49. The claimant after his response to the Notice to Show cause was invited for a disciplinary hearing by a letter dated 27<sup>th</sup> June 2022. He was still charged with failing to supervise the swapping of the batteries and benefitting from the sales of the batteries by receiving Kshs.86,000 = whereas the Respondent says he lost Kshs.2,625,356 16.
50. After the disciplinary hearing on 26<sup>th</sup> July 2022 the Respondent recommended the claimant be terminated for gross misconduct and violation of terms of conditions of service.
51. In the summary dismissal letter dated 1<sup>st</sup> August 2022 he was informed that the reason for dismissal was failure to supervise the Linksoft technicians which led to loss of Kshs.2,625,856 16 to the Respondent company. Apparently he received two letters of dismissal dated the same day. The Respondent witness Odhiambo Ooko said the second letter was to merely correct a typo by the Respondent to justify terminating the claimant from his employment. The claimant had worked for the Respondent for close to 10 years and as late as 25<sup>th</sup> May 2022 he had received a letter of recognition from none other than Mr. Ndegwa the Chief Executive Officer. He had received also an incentive payment. Then immediately after that these accusations.
52. In the case of Kenfreight (e.a.) Limited -vs- Benson K. Nguti (2016) eKLR. The court held that termination is considered unfair if the employer fails to demonstrate that the reason for termination is valid and fair. The Claimant was also charged with receiving Kshs.86,000 = but no evidence was adduced to prove that charge and it was eventually dropped.  
  
The staff of Linksoft Mr. Ratemo who had alleged that the Claimant instructed him to sell the batteries and passed Kshs.86,000 = to him (claimant) was not called as a witness and so his evidence cannot be weighted at all. All the allegations against the Claimant was mostly from the allegations by Mr. Ratemo and even the investigators recommended that Mr. Ratemo should not work in Safaricom sites any more. The court therefore holds the allegations of Mr. Ratemo very loosely.
53. The court finds there are many gaps that make suspect the reasons given and considering that the reasons for termination should be related to the employee's conduct, capacity and compatibility or is based on operational requirements of the employer the court finds the same are not proved. The above was reiterated in the case of Paul Nyamai Kimanga & Another -vs- Pestlab Limited (supra)
54. Similarly in the case of Nicholas Musya Kyula -vs- Farmchem Ltd 2012 (Supra) the court held that the employer must conduct proper investigations and clearly communicate the grounds for termination.
55. Frankly in this case it is like the Respondent was fishing for a reason to terminate the Claimant. The court agrees with the claimant's submissions that the Respondent kept changing the goal posts as



pertaining to the reasons for termination of the claimant summarily. Even if the Claimant was taken through disciplinary proceedings fair procedure cannot be confirmed if the reasons for termination are not clearly stipulated to the Claimant to enable him prepare properly for his defence.

56. The court therefore finds the Respondent did not demonstrate a valid reason for terminating the Claimant. It behoves the court to enter judgment in favour of the Claimant.

57. The Claimant having succeeded in proving he was unlawfully terminated he is awarded the following:

1. General damages for unlawful termination for 10 months totalling Kshs.5,113,225 80.
2. The above is reasonable to compensation and the court will decline all the other prayers except Kshs.511,322 58 being one month salary in lieu of notice.  
Total award is Kshs.5,624,548 60.
3. He is also awarded costs and interest at 14% per annum from date of judgment till full payment.  
Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *akn ke act 2010 constitution the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *akn ke act 2010 constitution the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

