



**Kora v Kenya Kazi Services Limited (Employment and Labour Relations Cause E324 of 2021) [2025] KEELRC 2817 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2817 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E324 OF 2021  
HS WASILWA, J  
OCTOBER 21, 2025**

**BETWEEN**

**SAMMY CHACHA KORA ..... CLAIMANT**

**AND**

**KENYA KAZI SERVICES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Plaintiff instituted this claim vide a plaint dated 9<sup>th</sup> January 2021 and prays for judgment against the Defendant for: -
  1. That the disciplinary was unprocedural hence unfair and unlawful;
  2. That an order be issued compelling the Defendant to pay the plaintiff his terminal;
  3. General damages for summary dismissal;
  4. Costs of the suit;
  5. interest on (1), (2), (3) and (4) above.

**Plaintiff's Case**

2. The Plaintiff avers that he was employed by the Defendant as a driver from the 8th March 2014 to 9th May 2019. Earning a basic salary plus allowances of Kshs 44,032.70
3. The Plaintiff indicated that on 25th April 2019 while at work driving motor vehicle registration number KBW 348U he was involved in an accident along Lusaka enterprise road that led to the injury of a security dog.
4. He indicated that the accident was beyond his control and the same was reported at Industrial area police station and he was not charged with any criminal or traffic offence.



5. The Plaintiff states that he was illegally dismissed without probable cause and prays for payment of terminal dues and the salary for the remaining five years till retirement.

### **Defendant's Case**

6. In opposition to the Claim, the Defendant filed a statement of Defence dated 17<sup>th</sup> November 2023.
7. The Defendant stated that on 25<sup>th</sup> April 2019 the claimant while driving motor vehicle registration number KBW 348U Isuzu D-Max he was involved in an accident along Lusaka Enterprises Road while using wrong lane he collided with motorbike registration number KMDA 467Q seriously injuring the rider and the pillion passenger.
8. The Defendant stated that the road traffic accident was caused solely by the plaintiff's carelessness, recklessness and negligence while driving motor vehicle registration number KBW348U.
9. The Defendant pleaded that the claimants' actions were a breach of the traffic rules and company regulations and amounted to gross misconduct.
10. The Defendant avers that the plaintiff was dismissed on account of gross misconduct
11. The Defendant states that on the 30<sup>th</sup> May(sic) 2019 the Claimant was issued a notice to show cause which the claimant responded on 6<sup>th</sup> April 2019 and was subjected to a disciplinary hearing on the 9<sup>th</sup> April 2019.
12. The Defendant states that during the hearing the Claimant admitted that he used the wrong lane to avoid traffic, an action which led to the road traffic accident.
13. It's the Defendant's case that the disciplinary committee considered all the relevant facts and resolved to terminate the claimant's employment.
14. The Defendant states that due process was followed in terminating the claimant on the basis of gross misconduct.
15. The Defendant states that the Claimants basic salary was Kshs 18,320 and states that the Plaintiff was paid all his terminal dues.
16. The Defendant contends that reinstatement is impractical as the claimant was terminated from employment 4 years ago, he is not entitled to any retirement benefits as the claimant had not retired, severance pay can only be paid upon termination on redundancy and that the Claimant had utilized his annual leave while in employment.

### **Evidence in Court**

17. The Plaintiff (CW1) adopted his witness statement dated 9<sup>th</sup> January 2021 as his evidence in chief and produced his filed bundle of documents as his exhibits 1-14.
18. During cross examination, CW1 testified that he was employed by the respondent as a driver. He further stated that on the 20<sup>th</sup> April 2014 he was involved in accident with a motor bike while going for dogs' deployment.
19. CW1 testified that the accident was reported and the police abstract indicates that the driver was to blame.
20. CW1 testified that he was issued with a show cause letter and was subjected to a hearing and was later issued with a termination letter



21. CW1 also avers that he appealed against the decision of the disciplinary panel and the appeal was also dismissed.
22. The Defendant's witness, Julius Nzula (RW1) adopted his witness statement dated 25<sup>th</sup> January 2024 as his evidence in chief and produced the Respondent's filed documents dated even date as his exhibits.
23. During cross-examination, RW1 testified that he has no training in traffic matters.
24. RW1 testified that he has worked for the Defendant from 2006 to date. He was a fleet officer in charge of the vehicles and drivers and that he was not the Plaintiff's friend.
25. RW1 testified that he does not know the dog's name or the number of dogs that got lost; He was not in charge of loading the dogs

### **Plaintiff's Submissions**

26. The Claimant submitted on three issues: -whether the Plaintiff was an employee of the Defendant; whether the termination of the plaintiff was unfair; whether the plaintiff is entitled to the reliefs sought in the plaint.
27. On the first issue the Plaintiff submitted that he was employed by the Respondent as a driver on the 8<sup>th</sup> March 2014 until 9<sup>th</sup> March 2019.
28. On the second issue, the Plaintiff submitted that he was terminated from employment on the allegation of negligence which was as a result of an investigation report done by the company. He submitted that no investigations were done as the defendant offers security and risk management services.
29. The Plaintiff submitted that the accident was reported at Industrial area police station and no legal body blamed the Plaintiff for the accident and no charges were preferred against him.
30. The Plaintiff submitted that the dismissal was unfair and the lawful procedure was not followed since the plaintiff was not accompanied by a union official during the disciplinary hearing.
31. On the third issue the Plaintiff submitted that having proven that he was unfairly terminated he is entitled to the prayers sought. He relied in the holding in *Munya v Kithinji & 2 others* [2014] KECA 876 (KLR).

### **Defendant's Submissions**

32. The Defendant submitted on two issues: - whether the plaintiff's termination was unlawful, unfair and unprocedural; and whether the plaintiff is entitled to the reliefs sought?
33. On the first issue, the Defendant submitted that it had meet the requisite threshold as it had a valid reason for terminating the plaintiff from employment and the procedure was adhered to as required under Section 43 and 45 of the *employment Act*, 2007.
34. The Defendant relied in *Pius Machafu Isindu v Lavington Security Guards Limited* (2017) eKLR where the court held;

“....The employer must prove the reason 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”
35. The Defendant submitted that the Plaintiff in the course of his duties of deploying security dogs he carelessly, recklessly and negligently drove motor vehicle registration number KBW 348U on the wrong



lane along Enterprise Road and collided with motorbike registration number KMDA 467 Q and as a result of the accident the rider and the pillion passenger sustained serious injuries and one of the Defendant's dogs escaped.

36. The Defendant submitted that during the disciplinary hearing the claimant admitted to have opted to use a shortcut to save time which action caused the accident.
37. The Defendant submitted that its internal investigations showed that the driver was at fault for driving on the wrong lane. It also submitted that as the employer it has a duty and mandate to carry out internal investigations into any incident involving its employees.
38. The Defendant placed reliance in *Maina Mwangi v Thika Coffee Mills Limited (2014) 599 (KLR)* wherein the court held:

“The next phase involves investigations by the Employer and consideration of the Employee could fit better in another role within the organization. At investigation, the Employer should engage the employee, and if at the end of these steps, dismissal of the Employee is the course that commends itself to the employer, then Section 41 of the *Employment Act, 2007* must come into play.”
39. The Defendant submitted that the Plaintiff's performance of his duties negligently amounted to a breach of traffic rules under Section 47 of the *Traffic Act*.
40. The Defendant cited *Omondi v Kenya Power & Lighting Company Limited (2025) KEELRC 1823 (KLR)* where the court found that the criminal case did not affect the dismissal decision of the Respondent as the criminal case proceedings are not binding on the internal proceedings of the employer.
41. The Defendant submitted that in compliance with Section 41 of the *Employment Act*, the Plaintiff was issued with a notice to show cause, granted sufficient time to respond to the notice, he attended disciplinary hearing and the disciplinary Panel resolved to summarily dismiss the claimant. The Plaintiff appealed the decision and upon hearing the appeal the decision to summarily dismiss the claimant was upheld.
42. It is the Defendant submission that the Plaintiff was summarily dismissed on account of gross misconduct hence not entitled to retirement benefits as alluded in the plaint.
43. The Defendant further submitted that the Plaintiff had utilised his leave days while still in employment.
44. It is the Defendant's submission that the Plaintiff was fairly terminated, therefore, he is not entitled to compensation for unlawful termination. The Defendant urges the court to dismiss the suit with costs.
45. I have examined all the evidence and submissions of the parties herein. From the statement of the claimant, it is true that he was involved in an accident. He also admitted that the police abstract indicated that he was to blame and he admitted driving the vehicle on the wrong side of the road.
46. The claimant also admitted in cross-examination that he was subjected to an internal disciplinary hearing before dismissal. In view of these facts, the respondents had valid reason to dismiss the claimant. The respondents also subjected the claimant to a fair disciplinary process.
47. In the circumstances, I do not find the dismissal of the claimant unfair as submitted. The claim therefore fails and is therefore dismissed. There will be no order of costs.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

