



**Rotich v Chemartin Tea Company Limited (Cause E023 of 2022)  
[2025] KEELRC 2718 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2718 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E023 OF 2022  
MA ONYANGO, J  
OCTOBER 3, 2025**

**BETWEEN**

**ALFRED KIPLAGAT ROTICH ..... CLAIMANT**

**AND**

**CHEMARTIN TEA COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Vide his Memorandum of Claim dated 29<sup>th</sup> September 2022 and filed in court on the even date, the Claimant avers that he was employed by the Respondent as a Manager on 5<sup>th</sup> August 2003 and diligently served in that capacity until 13<sup>th</sup> January 2021.
2. It is the Claimant’s assertion that on 13<sup>th</sup> January 2021, the Respondent unlawfully and unfairly terminated his employment without notice, without a hearing, and without payment of his lawful terminal dues.
3. The Claimant contends that the termination process was contrary to the provisions of the Employment Act, 2007, the principles of fair labour practices and natural justice.
4. As a result of the unlawful termination, the Claimant claims he is entitled to the following terminal dues:
  - i. Two months’ pay in lieu ..... Kshs. 400,000
  - ii. December 2021 salary ..... Kshs 200,000
  - iii. 13 days salary for January 2021 ..... Kshs 86,667
  - iv. Unpaid leave 2020  
plus travelling allowances ..... Kshs. 220,000



- v. Severance Pay ..... Kshs 2,040,000
- vi. 12 months compensation for  
unfair termination ..... Kshs 2,400,000
- Total ..... Kshs. 5,346,667

5. The Claimant prays for judgment against the Respondent as follows:

- a. A declaration that the termination process as carried out by the Respondent is unlawful and that during his employment with the Respondent, he was not remunerated as required by law
- b. Payment of Kshs. 5,346,667 being terminal dues and compensation particularized above.
- c. Certificate of service
- d. Costs and Interests
- e. Any other relief the Honourable Court may deem fit to grant.

6. The Respondent filed a Response dated 6<sup>th</sup> December 2022 which was later amended on 30<sup>th</sup> May 2024 to include a counterclaim.

7. According to the Respondent, the Claimant's employment was terminated procedurally and in accordance with the law through a summary dismissal letter dated 13<sup>th</sup> January 2021.

8. The Respondent states that prior to the dismissal, the Claimant was issued with show cause letters dated 7<sup>th</sup> December 2020 and 14<sup>th</sup> December 2020, was duly invited to and attended a disciplinary hearing held on 8<sup>th</sup> January 2021, and was found culpable of gross misconduct leading to his summary dismissal done in compliance with the Employment Act, 2007.

9. In the Counterclaim, the Respondent averred that on 30th April 2020, it conducted an audit of its accounts for the year ending 30th April 2020, which revealed a loss of current assets which included cash and cash equivalents amounting to Kshs. 4,976,097.

10. The Respondent contended that during the material period, the Claimant was responsible for approving all payments, safeguarding the company's cash assets, and utilizing the liquid cash available. It was alleged that the audit established that the company could not account for the said sum, and the Claimant, being the officer in charge of cash assets, was invited to provide particulars of its appropriation.

11. The Respondent stated that at the hearing held on 8th January 2021, the Claimant failed to provide particulars of the appropriation of the funds and was unable to account for the money. The Respondent's accountant presented account statements confirming the accuracy of the audit report, but the Claimant still could not account for the funds.

12. The Respondent maintained that the money was lost and mishandled through the Claimant's dishonesty, fraud, breach of trust, and misappropriation, and consequently counterclaimed for Kshs. 4,976,097 being the losses allegedly incurred.

13. The Respondent avers that the dismissal of the Claimant was lawful, fair and justified and that the Claimant is not entitled to compensation or any of the reliefs sought in the Memorandum of Claim.

14. The court was urged to dismiss the Claimant's suit and to enter judgment against the Claimant in the terms sought in the counterclaim with costs.



## The Evidence

15. The case was heard on 28<sup>th</sup> October, 2024 when the Claimant testified on his behalf as CW1 and called one witness in support of his case.
16. The Claimant adopted his witness statement dated 29<sup>th</sup> September 2022 as his evidence-in-chief and relied on the documents filed in support of his claim. He urged the Court to order the Respondent to pay him his terminal dues, costs of the suit, and to issue him with a Certificate of Service.
17. On cross-examination, the Claimant stated that he was initially employed as a clerk and was later promoted to the position of Estate Manager. He further testified that he was a member of the Kenya Plantation and Agricultural Workers Union. He maintained that he was neither informed of the reasons for his dismissal nor accorded a hearing.
18. The Claimant testified that he was sent on compulsory leave but was subsequently instructed by the Respondent's directors not to proceed on leave. He stated that he had no documentary proof of such instructions. He further stated that he was not aware of any investigations having been conducted. He relied on minutes of a meeting held on 29<sup>th</sup> October 2020 which, according to him, indicated that he was not to be investigated. When referred to a letter dated 27<sup>th</sup> October 2020, the Claimant explained that the letter did not reflect a clear resolution and that no decision had been reached on the matter. He noted that the said letter sent him on compulsory leave pending investigations and contained allegations similar to those set out in the compulsory leave letter.
19. The Claimant testified that after investigations, he was issued with a show cause letter dated 7<sup>th</sup> December 2020 but did not respond to it. A disciplinary hearing was scheduled for 15<sup>th</sup> December 2020 but the meeting was postponed as the Respondent awaited his response to the show cause letter. He admitted that during the disciplinary hearing, a union representative was present.
20. The Claimant conceded that he did not submit any response prior to the hearing of 8<sup>th</sup> January 2021. He attended the said meeting but asserted that it was presided over by strangers and not the Respondent's directors. He referred to a letter dated 14<sup>th</sup> December 2020 postponing the meeting at his request, which indicated that he would appear before the Board of Directors or their representatives alongside other stakeholders. He added that when he objected to the presence of strangers during the meeting, it was postponed to 15<sup>th</sup> January 2021 via a letter dated 9<sup>th</sup> January 2021. However, on 13<sup>th</sup> January 2021, he was issued with a summary dismissal letter.
21. The Claimant denied allegations of sending abusive messages and threats to one Moses Chepkwony, stating that he had been summoned to the Directorate of Criminal Investigations (DCI) over the issue and had recorded a statement.
22. On re-examination, the Claimant reiterated that he did not proceed on compulsory leave as the Respondent's directors, in a meeting held on 15<sup>th</sup> October 2020, had instructed him not to do so on the ground that he had no case to answer. He relied on minutes of the meeting held on 29<sup>th</sup> October 2020 to support this position.
23. The Claimant called Alex Ochola Onono who testified as CW2 and stated that he formerly worked for the Respondent as an accountant. He adopted his witness statement dated 6<sup>th</sup> July 2023 as his evidence-in-chief.
24. CW2 testified that he attended the meeting held on 8<sup>th</sup> January 2021, having been summoned to attend. He stated that he did not take minutes of that meeting because he was not instructed to do so. When referred to the Respondent's documents, including minutes indicating that



CW2 had taken them, he denied doing so. He described the meeting of 8<sup>th</sup> January 2021 as chaotic and stated that it was disrupted due to the violent behavior of children of the directors', after which the meeting was abandoned. CW2 confirmed that he had taken minutes of a previous meeting held on 27<sup>th</sup> October 2020, where four directors were present, and that during that meeting it was decided that the Claimant should not proceed on compulsory leave and should continue performing his duties. CW2 further stated that he was not aware if a new date was fixed after the aborted meeting of 8<sup>th</sup> January 2021.

25. He explained that the Claimant's role involved supervising tea collection and allocating tasks to employees, and that the Claimant was not responsible for financial matters, which were under the Managing Director's office. In reference to the audit report dated 30<sup>th</sup> April, 2020 filed by the Respondent, CW2 stated that there was no loss or deficit reflected in the report.
26. On cross-examination, CW2 stated that he was called to the meeting of 29<sup>th</sup> October 2020 by the directors and took the minutes of that meeting. He stated that he did not take minutes for the meeting of 8<sup>th</sup> January 2021. He stated that although his signature appeared on those minutes, he did not take the minutes of that meeting.
27. On re-examination, CW2 stated that minutes are usually signed on every page. He noted that there was a blank page where signatures could have been appended. He reiterated that although a meeting had been scheduled for 8<sup>th</sup> January 2021, it did not take place owing to chaos.
28. The Respondent called two witnesses in support of its case. Moses Kibyegon Chepkwony testified as RW1. He introduced himself as the Respondent's current Estate Manager. RW1 adopted his witness statement dated 15<sup>th</sup> June 2023 as his evidence-in-chief and relied on the documents filed by the Respondent. He stated that the Claimant had been sending him abusive messages.
29. On cross-examination, RW1 testified that Estate Managers do not prepare payrolls or authorize salary increments. He explained that salaries for management staff are approved by the Board of Directors, while increments for unionisable employees are negotiated through a Collective Bargaining Agreement (CBA). He added that all company funds are deposited into the company account, which is managed by the directors. RW1 noted that among the minutes filed by the Respondent, one set contained signatures while another did not. He testified that although there were issues during the meeting of 8<sup>th</sup> January 2021, the meeting nonetheless proceeded to conclusion. RW1 confirmed that no payments had been made to the Claimant owing to financial constraints, and that some company funds had been lost. He added that the Claimant was served with a compulsory leave letter dated 14<sup>th</sup> October 2020 and a subsequent letter dated 7<sup>th</sup> December 2020, whose contents differed. He confirmed that the Claimant handed over his duties and everything was received without any issues being raised against him in the handover process.
30. On re-examination, RW1 stated that the letter dated 14<sup>th</sup> December 2020 was a show cause letter issued after the compulsory leave letter and that another show cause letter had been issued earlier.
31. RW2 was Abraham Kipkemboi Bor. He introduced himself as the person who prepared the audit report dated which was filed by the Respondent among its documents. He testified that in his report, there was a cash and cash equivalent item representing money that had been withdrawn for use within the year, but as at April, the money had not yet been utilized.



32. On cross-examination, RW2 admitted that his report did not indicate any losses. He explained that when cash is withdrawn but not accounted for, it is treated as unutilized unless supported by receipts.
33. Upon the close of the parties' respective cases, the Court directed them to file written submissions. The Claimant's submissions are dated 5<sup>th</sup> December 2024, while those of the Respondent are dated 18<sup>th</sup> July 2025.

### **Analysis and Determination**

34. Having considered the pleadings, the evidence adduced and the submissions of the parties, the following issues arise for determination: -
  - i. Whether the Claimant's employment was terminated based a valid reason and fair procedure
  - ii. Whether the Claimant is entitled to the reliefs sought.
  - iii. Whether the Respondent has proved its counterclaim against the Claimant.

### **Whether the Claimant's employment was terminated based a valid reason and fair procedure**

35. On the first issue, the Claimant maintained that his employment contract with the Respondent was terminated without a valid reason and that due process was not followed.
36. The Respondent on the other hand contended that it summarily dismissed the Claimant from employment on account of acts of misconduct which, in its view, justified the termination. It further asserted that the Claimant was served with show cause letters, accorded a fair hearing and was thereafter lawfully dismissed from employment.
37. Section 41 of the *Employment Act*, 2007 requires that before termination on grounds of misconduct, the employer must explain the reasons to the employee in the presence of another employee or shop floor representative and accord the employee an opportunity to be heard. Sections 43 and 45 further place the burden on the employer to prove the reasons for termination and to show that the same were valid and fair.
38. The Claimant asserted that he was neither notified of the charges against him nor accorded a fair hearing. The Respondent produced show cause letters dated 7<sup>th</sup> and 14<sup>th</sup> December 2020 and maintained that a disciplinary hearing was held on 8<sup>th</sup> January 2021, in the presence of a union representative. The Claimant admitted on cross-examination that he received a show cause letter but did not respond. He also conceded attending the disciplinary hearing, although he alleged that it was chaotic, was presided over by "strangers" and that it did not in fact take place.
39. From the evidence, it is not in dispute that the Claimant was invited to a disciplinary hearing and attended the same. The evidence of CW2 and RW1 differed on whether the meeting came to a conclusion.
40. Upon perusal of the minutes filed by the Respondent, the Court is satisfied that a disciplinary meeting did in fact take place and that the Claimant was accorded an opportunity to respond to the charges against him. The Claimant's and his witness's contention that the meeting was chaotic is not supported in light of the duly signed minutes. Although CW2 disputed having authored the minutes, the record does not indicate that he was responsible for recording them. On a balance of probabilities, the Court finds that the Claimant attended the hearing and that the Respondent substantially complied with the procedural requirements of Section 41 of the *Employment Act*, 2007.



41. Regarding the issue whether the Respondent was justified in dismissing the Claimant, the Respondent alleged that he misappropriated Kshs. 4,976,097.
42. Section 43 of *Employment Act* 2007 provides as follows:
- “ 43. Proof of reason for termination
- (1) In any claim arising out of termination of a contract, the employer shall be required 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.
- (2) 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”.
43. During cross-examination, the Respondent’s witness, RW2, conceded that his audit report used to terminate the Claimants’ employment did not disclose any actual loss but only reflected cash withdrawals that had not yet been accounted for. No evidence was produced to directly link the Claimant to the alleged misappropriation. On the contrary, RW1 confirmed that the Claimant duly handed over his duties without any queries being raised.
44. Based on the foregoing evidence the court finds that the burden of proving valid reasons under Sections 43 and 45 of the Act was not discharged.
45. Consequently, the Court finds that the termination of the Claimant’s employment was procedurally fair but substantively unjustified, and therefore unfair within the meaning of Section 45 of the *Employment Act*.

**Whether the Claimant is entitled to the reliefs sought.**

46. Having found that the termination of the Claimant’s employment was unfair, the Court will now consider the remedies sought in his claim.
47. In his Memorandum of Claim, the Claimant prayed for various reliefs which I address as hereunder in separate heads.
- a. A declaration that the termination process as carried out by the Respondent is unlawful and that during his employment with the Respondent, he was not remunerated as required by law
- I declare the termination of the Claimant’s employment unfair as the Respondent did not prove valid reason for the Claimant’s dismissal.
- b. Two months pays in lieu
- Having found that the termination of the Claimant’s employment was unfair, the Court holds that he is entitled to payment in lieu of notice. Although the Claimant sought two months’ salary in lieu of notice, his letter of confirmation dated 15<sup>th</sup> September, 2017 indicates that he was entitled to 30 days’ notice or pay in lieu, which is in conformity with Section 35(1)(c) of the *Employment Act*, 2007, that provides for not less than twenty-eight days’ notice or one month’s salary in lieu thereof. Accordingly, I award the Claimant Kshs. 200,000/= being one month’s pay in lieu of notice.



- c. 13 days salary for January 2021

The Claimant sought payment for 13 days worked in January 2021. The Respondent did not rebut this claim. No evidence was produced to demonstrate that the Claimant had been paid for the said period. RW1 in fact admitted that the Claimant had not been paid. I therefore award the Claimant Kshs. 86,667/= being salary for 13 days worked in January 2021.

- d. Unpaid leave 2020 plus travelling allowances

The Respondent, in its documents filed in Court, annexed a leave pay statement for 2019 dated 12th August 2020. However, no leave pay record was filed for 2020, which the Claimant claims. Having considered the evidence, the Court finds that the Claimant is entitled to payment for leave days. His claim for leave travelling allowance fails as no evidence was led to establish entitlement to the same. I award the Claimant Kshs 200,000 in lieu of leave earned but not taken.

- e. Severance pay

This prayer is declined as severance pay is only applicable under section 40 (f) of the Employment Act to an employee whose employment has been terminated on account of redundancy.

- f. Compensation for unfair and unlawful termination

The Claimant prayed for maximum compensation for the unlawful termination. The Court is empowered under Section 49 of the Employment Act to award compensation for unfair termination. Considering the Claimant's length of service (17 years), the circumstances of termination especially that there was no valid reason for such termination, the obviously acrimonious way in which the Respondent handled his exit and all the circumstances of this case as well as the factors stated in section 49(4) of the Act, the Court finds that an award of ten (10) months' salary would be reasonable. The Claimant is therefore awarded Kshs. 2,000,000 as compensation.

- g. Certificate of Service

The Claimant is entitled to be issued with a Certificate of Service pursuant to Section 51(1) of the Employment Act 2007. The Respondent is directed to issue the same.

**Whether the Respondent has proved its counterclaim against the Claimant.**

48. On the third issue, the Respondent's counterclaim for Kshs. 4,976,097 was not proved to the required standard. RW2 conceded that there was no loss disclosed in his audit report and no other evidence was tendered to establish fraud or misappropriation by the Claimant or to link him to any loss. The counterclaim therefore fails and is dismissed.

49. In conclusion, judgment is hereby entered in favour of the Claimant against the Respondent as follows:

- i. A declaration is hereby made that the termination of the Claimant's employment was unfair, the Respondent having failed to prove the reasons for the dismissal.
- ii. One month salary in lieu of notice ..... Kshs. 200,000
- iii. 13 days salary for January 2021 ..... Kshs. 86,667
- iv. Pay in lieu of leave for 2020 ..... Kshs 200,000



- v. 10 months' salary compensation for  
unlawful termination ..... Kshs. 2,000,000

50. The Respondent shall issue a Certificate of Service to the Claimant.

51. The Respondent shall bear the Claimant's costs of this suit.

52. The counterclaim is dismissed with costs to the Claimant.

53. Interest shall accrue at court rates from date of judgment.

**DATED, DELIVERED AND SIGNED THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**

**JUDGE**

