

**IN THE COURT OF APPEAL  
AT NYERI  
(CORAM: KANTAI, LESIIT & ALI-ARONI,  
JJ.A.) CIVIL APPEAL NO. 41 OF 2020**

**BETWEEN**

**KENYA UNION OF COMMERCIAL,  
FOOD AND ALLIED WORKERS.....APPELLANT**

**AND**

**KITUI WATER &  
SANITATION COMPANY LIMITED.....RESPONDENT**

*(Being an appeal from the Judgment of the Employment and  
Labour Relations Court at Nyeri (Nzioki wa Makau, J.) delivered on  
15<sup>th</sup> May, 2019*

*in*

***E.L.R.C Cause No. 330 of 2017.)***

\*\*\*\*\*

**JUDGMENT OF THE COURT**

This appeal relates to an employer-employee dispute between the appellant, **Kenya Union of Commercial Food & Allied Workers** (a trade union within the meaning of the Trade Unions Act) representing **Emmanuel Kyambi Munguti** and the respondent, **Kitui Water & Sanitation Company Limited**

In a Memorandum of Claim filed by the appellant on behalf of the said Emmanuel Kyambi Munguti (hereafter called “the grievant”) it was alleged that the grievant was a permanent and pensionable employee of the respondent earning a salary and other allowances and benefits. It was alleged that on the 28<sup>th</sup> August,

2015 the grievant had written a letter to the Deputy Director Water Department of the respondent on use of abusive language and threatening words against him by the respondent's senior managers; that on the same day the grievant had handed over a motor cycle to an officer of the respondent. Earlier on 13<sup>th</sup> August, 2015 the respondent had transferred the services of the grievant from one station to another and thereafter on 15<sup>th</sup> September, 2015 the respondent had issued the grievant with a show cause letter based on several allegations; that on 13<sup>th</sup> October, 2015 the respondent had issued to the grievant a letter inviting him to appear before the Staff Advisory Committee on 21<sup>st</sup> October, 2015; that on 27<sup>th</sup> October, 2015 the grievant had made a response to the respondent's show cause letter. It was further alleged that on 12<sup>th</sup> November, 2015 the respondent had again issued the grievant with an invitation letter to attend Staff Advisory Committee on 17<sup>th</sup> November, 2015; that on 25<sup>th</sup> November, 2015 the respondent again issued a letter to the grievant inviting him to appear before the Human Resource Committee on 3<sup>rd</sup> December, 2015; that on 22<sup>nd</sup> November, 2015 the grievant had written a letter to the respondent raising several complaints and grievances against the respondent; that on 19<sup>th</sup> January, 2016 the respondent had terminated the services of the grievant on the basis of five allegations before affording him a hearing. It was alleged that despite several invitations to attend meetings the same did not take place as was scheduled and that the grievant had on 1<sup>st</sup> February, 2016 written a letter to the respondent disputing the termination. The appellant in

view of all those issues had reported a dispute to the cabinet secretary in charge of labour affairs who appointed a conciliator who had the matter go through a conciliation process where the respondent had agreed to reinstate three employees including the grievant whose dispute had been reported. It was the appellant's case in the Memorandum of Claim that the respondent's action to reinstate two employees and failure to reinstate him was an act of discrimination hence bad in law; that the respondent's termination letter to the grievant raised five allegations but without justification hence was unlawful; that the grievant was not afforded the opportunity to defend himself before the termination hence was unprocedural and unfair; that the appellant had stated that the grievant denied the allegations and nobody accused him of the allegations stated in the termination letter; that the respondent's action to terminate the grievant before first dislodging his contentions against senior officers and his defence was bad in law. It was alleged that the letter of complaint was before the grievant was terminated and that, therefore, it was only fair and just for him to be heard on the grievance before the final action. Further that the respondent's action to reduce the grievant's salary was bad in law and confirmed ulterior motive against the grievant. The appellant therefore submitted that the respondent should be ordered to pay the difference in salary with interest at 14% per annum on basic salary, house allowance, transport allowance and medical allowance and it was alleged that the difference amounted to Kshs.515, 820.38.

The main prayers in the Memorandum of Claim were that the court declares the respondent's action as unjustified, unfair and unlawful; that the respondent be ordered to reinstate the grievant unconditionally; that the court direct the respondent to pay to the grievant all benefits he was entitled to including claims from his day to day activities; a claim for using personal motorbike from 14<sup>th</sup> August, 2014 to 15<sup>th</sup> August, 2015 amounting to Kshs.144,000; payment of salary reduced unfairly at Kshs.515,820.38 or any other order that the court may find fit to address the cause of justice.

In a witness statement attached to the Memorandum of Claim the grievant repeated those issues and he adopted those as part of his evidence when he testified before the Judge. He stated in the material part in the statement that he was employed by National Water and Pipeline Corporation on 24<sup>th</sup> February, 1992 as an Artisan 111. That in the year 2005 during water sector reforms he was deployed to the respondent's premises where he continued to perform his duties up to the time of his termination; that up to September, 2012 he was earning a basic pay of Kshs.19,440.00, house allowance of Kshs.5,000.00, transport allowance of Kshs.3,000.00, medical allowance of Kshs.2,500.00 on monthly basis and that the earnings were reduced in October 2012; that his basic pay became Kshs.16,736.00, house allowance of Kshs.2,000.00, transport allowance of Kshs.1,000.00 and medical allowance of Kshs.2,000.00 with a total difference of Kshs.8,204 per month. He said that his salary was reduced against his wish. That

he needed to continue working; that at some time on 15<sup>th</sup> August, 2015 he was transferred to Voo Station where he served until his termination; that upon receipt of transfer letter he requested for 5 days off duty because he was unwell and that the off duty was granted whereafter he proceeded to Voo Station where he signed the attendance register. On 28<sup>th</sup> August, 2015 he wrote a complaint letter to the County Director of Water (of the respondent) against Mr. Martin Wambua, the Operation Manager and Mr. Albus Mutisya, the Human Resource Officer and he did handing over the same day; that the respondent instead of addressing his issues issued him with a show cause letter on 15<sup>th</sup> September, 2015; that on 21<sup>st</sup> September, 2015 he returned a motorbike that had been assigned to him; that he received several invitation letters to Staff Advisory Committee but none of the meetings had taken place; that on 19<sup>th</sup> January, 2016 he was issued with a termination letter which surprised him because from August 2015 he had been asked to go home and await a letter to recall him to work. He recalled that the respondent's Managing Director had agreed to compensate him Kshs.600 daily for the period he used his motorbike from 14<sup>th</sup> August, 2014 to 15<sup>th</sup> August, 2015 which worked out to Kshs.144,000.00 and he was also surprised that the respondent had agreed to reinstate two other employees but his services were terminated instead. He attached various letters and documents including his complaint dated 28<sup>th</sup> August, 2015 against the Operations Manager and the Human Resource Manager of the respondent where he complained of abuse, threatening and terror

words by the said officers against him, there were also salary slips, a handwritten document on handover of the motorbike, a letter of transfer dated 15<sup>th</sup> September, 2015 where the respondent complained that the grievant had failed to report to his new duty station on or before 15<sup>th</sup> August, 2015 as advised by the respondent's management even after facilitation. The letter stated that the grievant's said action had caused a lot of inconveniences and interruption of services at Voo Station. He was accused of failing to handover for reasons best known to himself. The letter went on to state that the respondent had received several complaints from clients regarding illegal connection of water which the grievant had done; complaints from 9 named clients were set out. The letter asked him *"...In light of the above show cause why disciplinary action should not be taken against you. Your response should reach my office on or before 22<sup>nd</sup> September, 2015. Your complaint letter dated 18<sup>th</sup> August, 2015 and received on 1<sup>st</sup> September, 2015 involving two of my officers is receiving the necessary attention. Meanwhile you should report to the police if you feel that your life is in danger as alluded for appropriate action."* That letter was signed by the respondent's managing director; there were also banking slips by clients for water connection; there was a reminder dated 13<sup>th</sup> October, 2015 by the respondent on Staff Advisory Committee Meeting to be held on 21<sup>st</sup> October, 2015 where the letter accused the grievant for failure to attend to a previous meeting slated for 30<sup>th</sup> September, 2015 for reasons known to himself; he was then invited to attend the meeting of 21<sup>st</sup> October,

2015 at 10.00 a.m.; there was a letter dated 22<sup>nd</sup> October, 2015 by the grievant to the respondent's managing director titled "Disciplinary Action" where the grievant stated that he had received a letter of transfer from the respondent dated 18<sup>th</sup> August, 2015 transferring him from Kwa Vonza; he stated that at the same time he had written requesting for off duty since he was unwell; that he was granted 5 days from 24<sup>th</sup> August 2015 to 28<sup>th</sup> August, 2015; that he had reported at Ikanga Station on 31<sup>st</sup> August, 2015 and proceeded to Voo Station ready to work; he stated that he had not handed over because he had written requesting for time to do so. On the issue of illegal connections of water at Kwa Vonza he stated that he had no idea about the issue since all the new connections he had done he had surrendered all the receipts at Katheka station and some he still held in his possession. On the named clients who complained against him he denied being involved with connecting water to them. He pleaded to continue working for the respondent with honesty, diligence and wherever his services were required. There was letter dated 13<sup>th</sup> October, 2015 by the respondent to the grievant inviting him to attend a Staff Advisory Committee Meeting to be held on 15<sup>th</sup> October, 2015. Then there was a letter of termination dated 19<sup>th</sup> January, 2016 to which the grievant responded on 1<sup>st</sup> February, 2016 where he requested that a board of director's meeting be convened to enable him defend himself as he had been denied a chance to present his side of the story.

In a reply to Memorandum of Claim the respondent in material part denied the claim stating that before joining the

respondent the

grievant was an employee of Kikuyu Water Company Limited; that the terms referred to in the Memorandum of Claim were those with the former employer and not those by the respondent; that before joining the respondent the grievant had undergone the recruitment process which included an interview where he was vetted and given the respondent's terms of employment and was placed on employment with new terms as by contract of employment dated 4<sup>th</sup> November, 2012; that the grievant had accepted that contract on 17<sup>th</sup> December, 2012 and also wrote a letter to the respondent's managing director thanking the respondent for the employment opportunity; that the terms of employment applied by the respondent were not the same as those applied by Kikuyu Water Company Limited. It was denied that there was decrease in the grievant's salary and allowances it being stated that he had been hired as a new employee under fresh terms; it was denied that the change of status from Kikuyu Water Company Limited to the respondent was a transfer; it was stated that the grievant had joined the respondent pursuant to a contract of employment dated 4<sup>th</sup> December, 2012; that the grievant's performance was poor and he was reprimanded severally by the respondent; that complaint of his poor performance began as early as 2013; that for instance on 27<sup>th</sup> August, 2013 the Assistant Operations Manager in Kithyoko where the grievant was stationed wrote to the respondent requesting for intervention because the grievant was engaging in a myriad of malpractices including carrying on a business of selling water fittings and imposing them on customers claiming that they

had been recommended by the respondent; selling the respondent's property; selling substandard materials for water connection passing them off as the property of the respondent; failing to attend to Agape Community Water Project on 21<sup>st</sup> August, 2013 and lying to the supervisor that he had done so. It was stated that following a letter of complaint the respondent had issued the grievant a notice to show cause why disciplinary action should not be taken against him on 11<sup>th</sup> September, 2013 based on the following grounds: that he had disobeyed a lawful command from his immediate supervisor through failure to reconnect Agape Community Water Project; that he had been selling fittings to customers purporting them to have been sold by the respondent while in real sense it was his business in a clear case of conflict of interest. It was stated that in response to show cause letter the grievant had admitted to carrying out the business of selling fittings to customers and in fact opening a shop in Kithyoko Market without the authority of the respondent and in a case of conflict of interest with the respondent; that on 3<sup>rd</sup> July, 2014 the grievant was transferred from Kithyoko Sub Station to Katheka Station where he was expected to report on 4<sup>th</sup> August, 2014; that on 7<sup>th</sup> July 2015 the grievant was issued with a written warning by the Resident Manager Katheka Station where he was stationed for failure to adhere to instructions and to refrain from engaging in malpractices which had been evidenced by the many customer complaints lodged with the customer case desk; that he was giving services fraudulently at the Kwa Vonza market area; that due to the numerous customer complaints

against him on 9<sup>th</sup> July,

2015 the respondent's managing director recommended that the grievant be transferred from Katheka Station to another station which resulted in him being transferred to Ikanga where he was required to report on or before 18<sup>th</sup> August, 2015; that he did not report to his new station as required but instead wrote a letter to the respondent requesting to be allowed to be off duty with effect from 24<sup>th</sup> August 2015 to 28<sup>th</sup> August, 2015 which request was not approved; that on 28<sup>th</sup> August, 2015 the grievant wrote to the respondent requesting to delay his handover to a later date which request was denied because he did not give any reasons as to why he could not hand over as required. That on 28<sup>th</sup> August, 2015 and upon him being denied permission to be off duty and to hand over later the grievant wrote a letter of complaint against the respondent's officers Martin Wambua and Albanus Mutisya complaining that they had used abusive, threatening and terror words against him. That throughout the months of August, September and October, 2015 complaints against the grievant continued to trickle in from customers at his previous station and specifically Kwa Vonza area leading to the letter of 15<sup>th</sup> September, 2015 where the grievant was issued a letter to show cause against him; that through that letter of 15<sup>th</sup> September, 2015 the respondent had acknowledged the complaints against its two employees and advised the grievant to report to the police. That after failing to respond to a notice to show cause the grievant was invited to appear before a Staff Advisory Committee on 13<sup>th</sup> October, 2015 which meeting he failed to attend without apology and this led

him to being invited to another meeting for 21<sup>st</sup> October, 2015; that when he attended that meeting he declined to respond to the notice to show cause claiming that he did not know why he had been summoned. The notice to show cause was given to him to which he responded to the next day stating that he had been granted permission to be away from work from 24<sup>th</sup> August, 2015 to 28<sup>th</sup> August, 2015 which was untrue because permission had been denied; that the technical manager had marked his letter of request as 'not approved'; that he reported at his new station on 31<sup>st</sup> August, 2015; that as pertaining the illegal connection the grievant confirmed that he had surrendered receipts for the new connection but it was noted that he had no authority to receive bank slips or receipts from clients and this confirmed the claim against him of conducting illegal water connections.

The grievant had stated at that meeting in answer to the notice that complaints from the clients who were connected to water after he was transferred were not done by him which according to the respondent was a confirmation that the grievant had failed to connect those customers whose applications had been approved before his transfer to connect water. Further that on 5<sup>th</sup> November, 2015 the grievant was invited to another Staff Advisory Committee staff meeting which he failed to attend without apology, he was again invited to another meeting through a letter of 12<sup>th</sup> November, 2015 which was to be held on 17<sup>th</sup> November, 2015 which again he failed to attend. He was summoned to a Human Resources Board Committee meeting for 3<sup>rd</sup> December, 2015 through a letter dated

25<sup>th</sup> November, 2025 after all the attempts to hold meetings had failed due to his non-attendance.

It was stated in the reply to the Memorandum of Claim that the Human Resources Board Committee listened to the grievant's complaints he had against the two managers who were interrogated and it was established that the grievant was relying on hearsay and the complaints were baseless; that the allegations had been made after the grievant knew that he was being investigated following numerous complaints that were from customers; that there was enough evidence of the grievant collecting monies from customers and the pretense that he was paying the same to the respondent which was proof that he was dealing with the respondent's clients fraudulently; that the grievant had installed illegal connections at the Kwa Vonza station; that the grievant had greatly tainted the image of the respondent; that he had deserted his duties by failing to report to his new station; that the grievant's performance and interpersonal skills were wanting; and, for all that the board had directed termination of his employment and advised the management of the respondent to contact customers affected by the illegal connections and work out a flexible payment plan to regularize the illegal connections.

It was alleged in the reply to the Memorandum of Claim that the Human Resource Board Committee had established that the grievant had tainted the name of the respondent by subjecting himself to pecuniary embarrassment contrary to section J9 of the

Public Service Code of Conduct, Disciplinary Control and Labour Relations by defaulting loans and not disclosing the said loan and attempting to change his salary pay-point to escape his loan obligations; it was stated that the grievant had been provided adequate opportunity to be heard through the notice to show cause and the Staff Advisory Meeting to which he failed to appear; further that the two other employees who had a dispute on employment had been surcharged for lesser offences while the grievant was charged with gross misconduct which necessitated his termination hence the disciplinary action taken.

The respondent stated that it had followed proper procedures before arriving at the decision to terminate the grievant and it prayed that the suit be dismissed with costs.

Attached to the response was a witness statement by Urbanus Wambua Mutisya, the respondent's Human Resource and Administration Manager where all the matters we have discussed were repeated; the witness adopted that statement at the hearing before the Judge. The documents attached to the statement included the documents already attached by the appellant that included termination letter in respect of the grievant dated 19<sup>th</sup> January, 2016 where the grievant was informed that his services had been terminated for the grounds that he had involved himself in conflict of interest while stationed at Kithyoko, prolonged absenteeism and failure to adhere to instructions requiring reporting to his new station after transfer; installation of illegal

connection at Kwa Vonza contrary to terms of his employment; soliciting for funds from customers by false pretense; and tainting the name of the respondent and subjecting himself to pecuniary embarrassment. There was a letter of appointment dated 4<sup>th</sup> December, 2012 where the grievant was informed of his appointment as an Artisan with the respondent with effect from the date of signing the offer and it included terms and conditions of employment; that there were various complaint letters addressed to the respondent by its clients in respect of the grievant for instance: Bernard K. Muli the Assistant Operations Manager of the respondent by a letter dated 27<sup>th</sup> August, 2013 complained of how the grievant was performing his services. The manger complained that the grievant imposed water fittings to customers in the name of the respondent which were not the respondent's fittings; that he sold the respondent's fittings irregularly; and that he sold substandard materials in the name of the respondent and that he had failed to attend to re-connection for Agape Community Water Project leading to that customer going without water for a long time. It was stated that despite various warnings he had refused to change his conduct; there was a letter dated 11<sup>th</sup> September, 2013 by the respondent's managing director for the grievant's misconduct at his place of work and his reply thereof dated 16<sup>th</sup> September, 2013; there was a letter dated 30<sup>th</sup> October, 2013 by Nicholas M. Munyoki which complaint related to cash given to the grievant to connect water but which had not been done; there was a complaint from Francis Katana dated 8<sup>th</sup> September, 2015 in the same

respect; Daniel Kiamba by letter of 4<sup>th</sup> September, 2015 to the respondent complained that he had been accused of stealing water after advice by the grievant to connect to the water mains; Nelson Muturi Ireri complained that his water had been irregularly disconnected by the grievant; Christopher Mutunga by his letter of 16<sup>th</sup> October, 2015 also complained of irregular activities by the grievant who had received cash but had not reconnected the water and there was a similar complaint by Augustus Kiteme Kamitu dated 7<sup>th</sup> September, 2015 amongst many others.

There was a warning by the respondent dated 7<sup>th</sup> July, 2015 about the grievant's conduct where he was warned to desist against the malpractices and always be giving true and consistent information concerning the services. There was a transfer dated 29<sup>th</sup> July, 2015 where the grievant was transferred from Katheka Station to Voo Sub Station; there was the grievant's letter dated 24<sup>th</sup> August, 2015 asking to be off duty. That letter is marked "Not Approved" on 24<sup>th</sup> August, 2015. There was "late handing over" dated 28<sup>th</sup> August, 2015 where the grievant asked to be allowed to hand over at a later date. It is marked that it was not approved for the reason that no reason was given for not handing over on time. There is also a letter dated 19<sup>th</sup> May, 2015 where the respondent informed the grievant that his request for a change of salary pay- point had been rejected because he was currently repaying a loan obligation with Co-operative Bank through a check-off system; there are minutes of the Human Resources Board Committee meeting held on 3<sup>rd</sup> December, 2015 where the grievant was in attendance.

It is at that meeting that the grievant's case was considered regarding his various alleged malpractices and after consideration a Staff Advisory Committee report was presented for deliberation. It was resolved that the grievant had no case against the manager Mutisya and Wambua and that there was enough evidence that the grievant had collected money from customers in the pretense of making necessary payment to the respondent's office; that the grievant had installed illegal water connections at Kwa Vonza market; that he had greatly tainted the image of the respondent; that he had deserted duties when he failed to report to his station Voo; that his performance and interpersonal skills was wanting and the board recommended that his services be terminated from the time of the last day of reporting from Voo station. Those minutes are duly signed on 24<sup>th</sup> May, 2016 by the chairman and the secretary.

The case was heard by **Makau, J.** where the grievant testified adopting the statement we have already summarized and the respondent also testified through its Human Resources Manager who repeated what we have summarized in his witness statement. The Judge considered the case, found no merit in it and dismissed it in the judgment delivered on 25<sup>th</sup> May, 2019. That is what provoked this appeal through a Memorandum of Appeal drawn by the appellant's Secretary General where 11 grounds of appeal are set out.

The appellant says that the learned Judge erred in law and fact by holding that the respondent had adduced evidence proving that the grievant had been notified of disciplinary hearing but that he had chosen not to attend; that the Judge had erred in law and fact by holding that the respondent had proved that the grievant appeared before the respondent's Board of Directors; that the Judge erred in law and fact by holding that the grievant was not transferred from Kikuyu Water and Sanitation Company limited; that the Judge erred in law and fact by failing to dislodge each of the claimant's contentions as put to the court; that the Judge erred in law and fact by finding that the grievant engaged in malpractices without the purported complainants testifying against the grievant at the disciplinary hearing and before the court; that the Judge erred in law and fact in finding that the grievant had absented himself from work without permission; that the Judge erred in law and fact when he failed to find that suspension without a valid letter from the respondent to the grievant was unfair and unprocedural; that the Judge erred in law and fact when he failed to find that the grievant was due for payment for the duration he was still in employment before his termination; that the Judge erred in law and fact when he failed to find that the respondent discriminated against the grievant; that the Judge erred in law and fact when he failed to realize that an employee who is terminated is eligible to payment of terminal benefits if that was the case and, finally, that the Judge erred in law and fact when he awarded the respondent costs of the suit.

It is proposed that the aforementioned judgment be set aside and the appeal be allowed with costs.

This is a first appeal from the Employment and Labour Relations Court in first instance and it is our duty and mandate to re-appraise the evidence and reach our own conclusions of facts. See the case ***Nairobi Bottlers Limited vs. Imbuga (Civil Appeal E661 of 2022) [2024] KECA 434 (KLR)*** as follows:

***“Our mandate in a first appeal as donated by rule 31 of the Court of Appeal Rules, 2022 is to re-appraise the evidence and to draw inferences of fact; to retry the case. That mandate has been the subject of various judicial pronouncements in such cases as Nicholas Njeru vs. Attorney General & 8 Others [2013] eKLR where it was stated: “[In] a first appeal, we are required to re-evaluate the evidence and arrive at our own independent findings and conclusions of the matter.”***

When the appeal came up for hearing before us on 29<sup>th</sup> April, 2025, **Mr. Atela** the 2<sup>nd</sup> Deputy Secretary General of the appellant appeared for the appellant while learned counsel **Ms. Kyania** held brief for **Mr. Musau** for the respondent.

In a highlight of written submissions, Mr. Atela pointed out that the main issue for determination was whether procedure had been followed in terminating the appellant’s employment and whether there was justification for such action. He cited section 41 of the Employment Act on procedure and submitted that there should be a notice to show cause, there should be a response to the same and that the employee is entitled to be represented by

a union

official and according to him the grievant was not heard. According to him the respondent did not produce records of minutes of meetings to show what procedure had been followed in terminating the grievant from employment. He further submitted that there was no evidence that the grievant had acknowledged any of the letters or summons asking him to attend meetings.

According to Ms. Kyania the grievant was freshly employed by the respondent and his terms and conditions were set out in a letter of employment. She submitted that the respondent presented valid reasons to terminate the grievant from employment and terminal benefits were paid. According to counsel the grievant had received several invitations to attend disciplinary hearings which he had set out in the chronology of events in the memorandum of claim. According to counsel, the grievant failed to appear in those meetings as required. The letter of termination gave reasons for termination and that due process had been followed in deciding to terminate the grievant from employment. Counsel submitted that terminal benefits were set out in the memorandum of claim but that the claimant did not lead any evidence to support those claims. According to counsel the respondent led evidence to show that the grievant was not allowed to use his own motor cycle; that the respondent showed pension had been remitted and there was no claim for salary arrears. Counsel submitted that the respondent was entitled to be awarded costs as it had defended the claim.

In a brief response Mr. Atela informed us that the appellant was not asking for terminal benefits but was asking for final dues. According to him it is the practice at the Employment and Labour Relations Court that costs are not awarded to either side.

We have already set out in this judgment most of the evidence relevant to the case and it will not be necessary to repeat it here. We have also looked at the grounds of appeal and the issues raised are not different or worthy of discussion in distinct paragraphs. One of the complaints is whether the grievant was freshly employed by the respondent or had been transferred from Kikuyu Water & Sanitation Company Limited. We cannot see that there can be any confusion on this issue. Although there is correspondence from Kikuyu Water & Sanitation Company Limited to the respondent asking whether the grievant could be transferred there is no follow up on the same to see whether transfer was effected at all. That issue is firmly settled by a letter dated 4<sup>th</sup> December, 2012 by the respondent which is titled "letter of appointment" which letter informed the grievant that he had been offered employment as an Artisan by the respondent. That letter proceeded to set out the terms of employment, salary amongst other terms and conditions governing the appointment. The grievant accepted that offer by signing the same on 17<sup>th</sup> December, 2012 where he accepted the offer as per the terms and conditions stipulated therein. Having signed that letter, he was bound by its terms and the letter ousted any previous employment that the grievant may have engaged in. There was no evidence presented by either side that

the respondent

accepted the grievant on transfer from any other organization. The grievant was bound by the four corners of that letter of employment in terms of section 97 of the Evidence Act and he could not bring any other evidence to contradict that letter. That complaint by the appellant has no merit and is dismissed.

The other grounds of appeal rotate around whether there was procedural justice in the way that the grievant's employment was terminated.

It is true in employment disputes that absent procedural justice an employer may most likely be found to be in violation of the law and the employee will be entitled to a remedy. **Sections 41 to 49** of the said Act cover areas relating, *inter alia*, to notification and hearing before termination on grounds of misconduct; reason for termination; summary dismissal; unfair termination; reasons for termination or discipline; complaint relating to summary dismissal or unfair termination; representation during disciplinary hearing and remedies for wrongful dismissal and unfair termination. Those provisions give in detail the language to be used by the employer at the disciplinary hearing, which the employee understands and he is entitled to representation by a shop steward or another employee, amongst other issues that are set out.

The complaint in the instant case was that the grievant was not accorded a hearing and that the process leading to the termination from employment was not in accordance with the law.

We have shown in this judgment all the various documents that were produced by either side before the Judge and what they stated in their witness statements which were adopted at the hearing. There can be no doubt in our minds going by all the complaints that were made against the grievant and various letters to attend to disciplinary issues that were brought to his attention that the grievant did not conduct himself in the way that an employee is required to conduct himself; that he disobeyed various lawful orders by his superiors; that he failed to report to stations on transfer without authority; he failed to attend to Agape Community Water Project without any justifiable cause and there was evidence that he conducted himself in conflict of interest in that he even opened a shop where he was selling fittings and products in competition with his employer the respondent. These are the things the Judge considered in finding that the grievant had been lawfully dismissed. But we are disturbed by the process that was followed by the respondent in reaching the determination to terminate the grievant. It was the appellant's case at the ELRC that various letters to the grievant summoning him to meetings were not delivered at all and were not received. When the respondent's witness was challenged on that issue his response was that the notices and summons had been sent to the grievant by a delivery book but he did not have such a delivery book. The respondent also relied heavily on complaints raised by customers who made various allegations against the grievant but there was no evidence that the grievant was directly confronted with those allegations. None of

those complainants was called to testify before the respondent's board or before the Judge so there is a process issue which has not been answered satisfactory by the respondent at all. The alleged delivery book was not produced by the respondent and minutes of meetings which the grievant was alleged to have failed to attend were not produced at all. The respondent did not answer the question raised by the grievant that alleged letters to the grievant summoning him to attend disciplinary meetings were not delivered or received at all. The respondent had a duty to discharge that claim and which it did not do.

Under the provisions of the Employment Act that we have cited and as properly submitted by the Deputy Secretary General of the appellant, the respondent was required to properly serve the grievant with the complaints made against him, ask him to show cause why disciplinary action should not be taken against him, take him through the process of a hearing which should have been conducted in a language that he understood; inform him his right that he was entitled to appear at the hearing accompanied by another employee or by a representative who must also be heard. None of this happened. Instead the only document that was laid before the Judge was minutes of the board meeting where the grievant's case against 2 of the respondent's managers was considered.

There is no evidence that the grievant was heard at the respondent's Human Resource Board meeting held on 3<sup>rd</sup>

December, 2015. It is shown that the grievant was in attendance but there is no indication that the allegations that were made to him were put to him and that he was given an opportunity to respond. He was not accompanied by a shop steward or a fellow employee as required by law. So there is clearly a breach of process, a situation that the Employment Act does not allow. The grievant's employment was therefore unfairly terminated on those technical grounds.

The grounds of appeal apart from the ground we have dismissed have merits and we allow the appeal. We set aside the judgment of ELRC and substitute thereof a finding that the grievant's employment was wrongfully terminated. What remedy therefore would the grievant be entitled to?

The grievant would not be entitled to reinstatement due to passage of time, a period of over 3 years since termination having passed; the grievant is entitled to compensation for unfair termination which in the circumstances we think should be salary compensation for 3 months. The grievant is also entitled to 3 months' salary in lieu of notice as per the letter of appointment dated 4<sup>th</sup> December, 2012 (clause 11 thereof); the grievant is also entitled to his salary up to the date of termination and any leave not taken up to the date of termination. The appellant is entitled to ½ costs of the appeal which has partially succeeded and costs at ELRC. The matter at ELRC to be listed before the Deputy Registrar

of that court who shall hear the parties on any unpaid salary up to termination and leave, if any, due and not taken.

Those, then, are our orders.

**Dated and delivered in Nyeri this 24<sup>th</sup> day of October, 2025.**

**S. ole KANTAI**

.....  
**JUDGE OF APPEAL**

**J. LESIIT**

.....  
**JUDGE OF APPEAL**

**ALI-ARONI**

.....  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original*

**Signed**  
**DEPUTY REGISTRAR**