



**Omollo v Toyota Kenya Limited (Cause E277 of 2024)
[2025] KEELRC 3052 (KLR) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3052 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E277 OF 2024
SC RUTTO, J
OCTOBER 31, 2025**

BETWEEN

CHARLES DULO OMOLLO CLAIMANT

AND

TOYOTA KENYA LIMITED RESPONDENT

JUDGMENT

1. It is not in dispute that the Claimant was employed by the Respondent from 17th February 2005 until the date of his summary dismissal.
2. The Claimant contends that his termination contravened Section 45 of the Employment Act and the provisions of the Respondent's Staff Handbook. Consequently, he seeks the following reliefs against the Respondent:
 - a. A declaration that the claimant's dismissal from employment by the respondent was unlawful as the Claimant had committed any gross misconduct as against the Respondent.
 - b. The Claimant be compensated as follows;
 - i. Unpaid salary for July 2018- Until her expected retirement age of 60 years
Kshs.19,229,958/=
 - ii. Leave allowance @ 6% of annual salary for the 8 years remaining to retirement
Kshs.90,493/=
 - iii. Damages for wrongful dismissal under Section 49 of the Employment Act
Kshs.2,226,348/=Total Kshs. 21,582,800/=



- c. The Respondent be ordered to issue the Claimant with a certificate of service as provided by law.
 - d. The Respondent be ordered to pay costs of this suit.
 - e. Interests on the awards herein at court rates and inclusive of the expected inflation rates.
 - f. Any further orders as the court may deem fit to grant.
3. The Respondent disputes the Claimant's allegations, maintaining that it followed due process and acted within the law in summarily dismissing the Claimant. It further asserts that the dismissal was justified by the gravity of the Claimant's conduct, which amounted to gross misconduct. Accordingly, the Respondent prays that the Claimant's claim be dismissed in its entirety with costs.
 4. The matter proceeded for hearing on 28th May 2025, during which both parties called oral evidence.

Claimant's Case

5. The Claimant testified in support of his case as CW1 and at the outset, sought to adopt his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed together with his Statement of Claim as exhibits before the Court.
6. The Claimant testified that on 5th June 2018, he was informed that the Respondent was investigating allegations that he had received money from a customer, contrary to the company policy prohibiting acceptance of gifts from third parties.
7. He stated that he was summoned to a closed-door screening meeting attended by Mr. Omar and members of the Security Department, which lasted the entire day.
8. The Claimant averred that the security team had a pre-prepared statement, and Mr. Omar, his long-time colleague, urged him to sign it, assuring him that it was a mere formality and that he would return to work thereafter.
9. According to the Claimant, on 20th June 2018, he was suspended from duty for two weeks and barred from accessing the Respondent's premises pending further investigations.
10. On 4th July 2018 (sic), he received a call summoning him to a meeting at the Respondent's headquarters on the afternoon of 6th July 2018. Upon arrival, he was issued with a letter titled "Disciplinary Hearing," which was backdated to 4th July 2018.
11. The Claimant stated that although the letter allowed him to be accompanied by a witness, the meeting was scheduled to take place within minutes, leaving him with no practical opportunity to secure one.
12. He further contended that he was never furnished with the investigation report to enable him to respond as required under the Respondent's Employee Handbook.
13. The Claimant further testified that after the hearing, he was instructed to report to work on 9th July 2018, but on 10th July 2018, he was unexpectedly issued with a letter of summary dismissal despite having served the Respondent diligently and without any prior warnings.
14. The Claimant added that he lodged an appeal on 16th July 2018, which was heard on 25th July 2018, and ultimately dismissed.
15. In conclusion, the Claimant urged the Court to allow his claim as prayed.



Respondent's case

16. The Respondent presented oral evidence through two witnesses, Petronilla Rop and Amos Wafula, who testified as RW1 and RW2, respectively. Ms. Rop, who was the first to go, identified herself as the Respondent's Human Resource Business Partner. She adopted her witness statement as her evidence in chief and proceeded to produce the list and bundle of documents filed on behalf of the Respondent as exhibits before the Court.
17. RW1 testified that under Clause 4 of the Claimant's employment contract, he was required to exercise reasonable care and skill in performing his duties, to diligently and conscientiously discharge his responsibilities, to comply with the Respondent's regulations and policies, to act in utmost good faith, and to promote the Respondent's interests at all times.
18. RW1 further stated that, in his role as Service Advisor, the Claimant was responsible for recommending necessary services and repairs on customers' vehicles.
19. According to RW1, the work and repairs in question were carried out, and in appreciation, the customer allegedly gave the team Kshs. 60,000/= to share among themselves, with the Claimant receiving Kshs. 20,000/= as his share.
20. RW1 added that the Respondent's Code of Conduct and Staff Handbook expressly prohibit employees from accepting gifts or monetary benefits from third parties, and violation of this rule attracts serious disciplinary consequences.
21. RW1 further testified that the Claimant was invited to a disciplinary hearing attended by herself and the General Manager–Operations. That the Claimant was informed that the meeting concerned allegations that he had received money from a customer and was given an opportunity to respond. She added that the Claimant was also advised that he could bring a witness to the meeting.
22. According to RW1, the Claimant declined to have a witness present and requested that the meeting proceed.
23. RW1 stated that during the hearing, the Claimant was informed that a customer had accused him of soliciting money to expedite repair work. When asked to explain the Kshs. 20,000/= received via M-Pesa from a colleague involved in the same job, the Claimant claimed it was repayment of a loan. However, he was unable to provide any evidence showing when or how the alleged loan had been advanced.
24. RW1 further averred that the Claimant was duly informed of the grounds for his dismissal and was accorded an opportunity to defend himself before the decision was made.
25. She added that the Claimant was to be paid all terminal dues due under his contract, including salary, leave pay, and a refund of pension contributions in accordance with the pension scheme rules.
26. Amos Wafula who testified as RW2, identified himself as the Respondent's Security Manager. He similarly adopted his witness statement to constitute his evidence in chief and proceeded to produce the list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
27. RW2 testified that on 3rd June 2018, the Respondent's management informed the security team of a complaint by a customer, Dr. Justin Muendo, who had taken his vehicle to the Respondent's body shop along Kampala Road for repairs.
28. It was alleged that some staff members assigned to the vehicle had demanded a bribe to facilitate the repairs. The security team therefore, visited the branch and commenced investigations.



29. During the investigations, the team met the customer at his office and interviewed him. The customer reported that upon taking his vehicle for repair, he dealt with an employee, who was one of the Claimant's colleagues, who suggested that the job could be prioritized if "something small" was offered.
30. The customer stated that the said employee initially demanded Kshs. 100,000/= but later agreed to Kshs. 60,000/=. The vehicle was subsequently repaired and released, and a few days later, the customer sent Kshs. 60,000/= via M-Pesa, which was allegedly to be shared among the staff who had worked on the car. RW2 testified that from this sum, the Claimant received Kshs. 20,000/=.
31. He added that records obtained during the investigation showed that the Claimant received the payment from the said colleague on the same day the colleague had received funds from the customer. When questioned, the Claimant claimed the money was repayment of a loan from one of his juniors, though he could not substantiate this.
32. RW2 added that he attended the disciplinary hearing where the Claimant was confronted with the allegations but failed to provide a credible defence or call a witness.

Submissions

33. The Claimant contended that since the Respondent failed to prove that he received any bribe from its customers or any other person, the reasons advanced for his termination were invalid and unfair.
34. Referring to the decision in Janet Nyandiko v Kenya Commercial Bank Limited [2017] eKLR and George Musamali v G4S Security Services Kenya Ltd [2016] eKLR, the Claimant submitted that the procedure adopted in terminating his employment was procedurally unfair.
35. On its part, the Respondent argued that the Claimant's assertions that he was not provided with the investigation report, that the report was unsigned, and that the minutes of the disciplinary hearing lacked signatures, did not alter his own admission that he was aware of the allegations against him, was accorded an opportunity to respond, and did in fact respond by claiming that the money he received was a loan from Benard Mutunga.
36. The Respondent further submitted that, notwithstanding those admissions, the authors of both the investigation report and the disciplinary hearing minutes testified in Court and confirmed preparing the documents.
37. In the Respondent's view, it had established the existence of a valid reason for terminating the Claimant's employment and demonstrated that the termination was carried out in accordance with a fair procedure.

Analysis and Determination

38. Having considered the pleadings, evidence on record, and the parties' respective submissions, the Court identifies the following issues for determination:
 - a. Whether the Respondent has established that there was a valid and fair reason for terminating the Claimant's employment;
 - b. Whether the termination of the Claimant's employment was carried out in accordance with the requirements of procedural fairness; and
 - c. Whether the Claimant is entitled to the remedies sought.



Valid and fair reason for termination?

39. In terms of Section 43 of the *Employment Act*, an employer bears the burden of proving the reasons for terminating an employee's employment. Failure to do so renders the termination unfair. Connected to the foregoing, Section 45(2)(a) and (b), is explicit that a termination is deemed unfair if the employer fails to demonstrate that the reason for termination was valid, fair, and related to the employee's conduct, capacity, or compatibility, or was based on the employer's operational requirements.
40. In the present case, the Claimant's employment was terminated on allegations that he received a bribe of Kshs. 20,000 from a customer.
41. In support of its case, the Respondent exhibited a statement by one Benard Ndunga, who stated that in early January 2018, he received Kshs. 60,000/= from one of the Respondent's customers, Dr. Justine Muendo, as a token of appreciation for work done on his car. According to Mr. Ndunga, he shared the amount among team members who had worked on the vehicle, allocating Kshs. 20,000/= to the Claimant, Kshs. 15,000/= to Susan Wanjiru, Kshs 5,000/= to Kennedy Wafula and Kshs 5,000/= to Peter Kinuthia, while he retained the balance of Kshs 15,000/=. He added that all the team members were aware that the customer intended to send the appreciation money.
42. In further support of its case, the Respondent produced an M-Pesa statement belonging to Mr. Ndunga, showing that on 27th January 2018, he received Kshs. 60,000/= from Dr. Muendo.
43. The same M-Pesa statement further reflects that it is on this very day, that Mr. Ndunga transferred Kshs. 20,000/= to the Claimant and Kshs. 15,000/= to Susan Wanjiru.
44. Coincidentally, these transactions all occurred on 27th January 2018, the date on which Dr. Muendo sent the Kshs. 60,000/= to Mr. Ndunga.
45. The investigation report also stated that Mr. Ndunga had carried out some repairs on Dr. Muendo's vehicle, specifically fixing bushes, on the Claimant's instructions and without a job card. Mr. Ndunga speculated that this could have been the reason the customer sent the money in appreciation.
46. The Respondent's investigation report further revealed that during his interview with the investigation team, Dr. Muendo confirmed meeting Mr. Ndunga, with whom he negotiated a payment of Kshs. 60,000/= to be shared among staff members to ensure that repairs on his motor vehicle would be given priority by their "bosses."
47. According to the report, the Claimant asserted that the Kshs. 20,000/= he received from Mr. Ndunga was repayment of a loan, a claim that Mr. Ndunga expressly denied during the investigation.
48. Similarly, Susan Wanjiru, another Service Advisor, admitted receiving Kshs. 15,000/= from Mr. Ndunga but also claimed that it was a loan.
49. The Claimant's explanation that the money he received was a loan is implausible. Here is why. Mr. Ndunga's M-Pesa records show that on that same day, he received Kshs. 60,000/= from Dr. Muendo, he transferred Kshs. 20,000/= to the Claimant and Kshs. 15,000/= to Susan, both of whom were members of the same team at the Respondent's body shop. These details align precisely with the statement Mr. Ndunga gave to the Respondent's investigation team on 4th June 2018.
50. It therefore follows that the Kshs. 20,000/= received by the Claimant originated from the Kshs. 60,000/= sent by the Respondent's customer, Dr. Muendo, following the repairs undertaken on his vehicle at the Respondent's body shop.



51. During cross-examination, the Claimant admitted that Mr. Ndunga was his subordinate and that he was aware the customer had given money to staff at the Respondent's body shop.
52. In light of the foregoing, the Claimant's claim that the payment was a personal debt lacks credibility. The timing and sequence of transactions point to a clear link between the customer's payment and the amount he received through his supervisee, Mr. Ndunga.
53. If I may add, it is irrelevant whether the Respondent referred to the money as a "gift" or a "bribe"; what matters is that it contravened company policy.
54. The Respondent's Staff Handbook expressly prohibits employees from accepting any gifts or benefits exceeding Kshs. 5,000/= from third parties, including customers.
55. Therefore, by receiving Kshs. 20,000/= from a customer, albeit indirectly through his subordinate, the Claimant acted in clear violation of the Respondent's Staff Handbook.
56. Accordingly, the Claimant's conduct gave the Respondent a valid and fair reason to terminate his employment.
57. In reaching this conclusion, the Court is mindful of the standard of proof applicable in employment disputes. As such, the Respondent did not have to prove beyond reasonable doubt that the Claimant received the sum of Kshs 20,000/= from its customer.
58. In explaining the standard of proof in employment disputes, the Court of Appeal in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR, reckoned as follows: -

“The standard of proof is on a balance of probabilities, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it genuinely believed to exist, causing it to terminate the employee's services.”
59. Applying this standard to the present case, the Court is satisfied that the Respondent has proved, on a balance of probabilities, that it had a valid and fair reason to terminate the Claimant's employment for receiving Kshs. 20,000/= from a customer in breach of the Staff Handbook.

Procedural fairness?

60. The requirement for procedural fairness is anchored in Section 45(2)(c) of the *Employment Act*, while Section 41 sets out the specific process an employer must follow. This includes informing the employee of the allegations against them and affording them an opportunity to respond in the presence of a fellow employee or a shop floor union representative of their choice.
61. Impugning the process that was applied in terminating his employment, the Claimant has stated that he was called by phone to attend a meeting at the Respondent's headquarters on 6th July 2018. Upon arrival, he was issued with a letter titled "Disciplinary Hearing" and was subjected to the hearing on the same day.
62. The Respondent exhibited in court a copy of a letter dated 4th July 2018, referenced "Disciplinary Hearing – 6th July 2018."
63. On the face of it, it is apparent that the Claimant received the letter on 6th July 2018, the very day of the hearing, thus giving him barely any notice. This confirms the Claimant's assertion that he was invited to attend the disciplinary hearing on the very day it was scheduled to take place.



64. In *Nebert Mandala Ombajo v Institute of Certified Public Accountants of Kenya (ICPAK)*, Nakuru Civil Appeal No. 62 of 2018, the Court of Appeal emphasized that disciplinary proceedings are a grave matter for an employee, given their potentially devastating consequences. The Court held that where serious allegations are involved, an employee must be given sufficient time to prepare psychologically and, if necessary, to seek appropriate advice or representation.
65. In this case, it is evident that the Claimant, having received the notice on the very day of the hearing, was unlikely to be adequately prepared to defend himself against the allegations leveled against him. Needless to say, the Claimant was ambushed, and the inadequate notice impaired his ability to present a proper defence.
66. Additionally, the Court finds the Claimant's assertion that he attended the hearing unaccompanied credible. Given the extremely short notice, it was unreasonable for the Respondent to expect him to secure the presence of a colleague or representative at the hearing.
67. In addition to the inadequate notice of the disciplinary hearing, the Respondent did not furnish the Claimant with the investigation report or other evidence it intended to rely on during the disciplinary process.
68. On this issue, the Court concurs with the decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, where the Court held that an employee is entitled to access documents in the employer's possession that would assist them in preparing their defence.
69. What's more, the minutes of the disciplinary hearing produced by the Respondent are notably scant and lacking in detail, leaving it uncertain whether the Claimant was accorded a fair opportunity to present his side of the story.
70. In sum, these circumstances demonstrate that the Respondent violated the Claimant's right to a fair hearing and conducted a flawed disciplinary process.
71. Considering the totality of the evidence herein and the requirements of Section 41 of the [Employment Act](#), the Court is satisfied that the Respondent failed to adhere to the principles of procedural fairness in terminating the Claimant's employment.
72. Consequently, the Court holds that the Claimant's termination was procedurally flawed and therefore unlawful.

Reliefs?

73. Having found that the Respondent established a valid and fair reason for terminating the Claimant's employment, but adopted a process that was flawed, the Court awards him compensatory damages equivalent to four (4) months of his gross salary. In making this award, the Court has taken into account the duration of the employment relationship and the Claimant's own contribution to the termination of his employment.
74. The Claim for salary and leave allowance up to the Claimant's retirement date is declined, as it constitutes an anticipatory claim. In reaching this conclusion, the Court is guided by the Court of Appeal's decision in *D.K. Njagi Marete v Teachers Service Commission* [2020] eKLR, where it was held that employment on permanent and pensionable terms does not, by itself, guarantee continuation in service until the mandatory retirement age of 60 years.



Orders

75. It is against this background that the Court enters Judgment in favour of the Claimant against the Respondent as follows:
- a. A declaration that the termination of the Claimant from employment was procedurally flawed and unlawful.
 - b. The Claimant is awarded compensatory damages in the sum of Kshs 754,116.00 being equivalent to four (4) months of his gross salary.
 - c. Interest on the amount in (b) at court rates from the date of Judgment until payment in full.
 - d. The Claimant shall also have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Mbithi

For the Respondent Ms. Wangari instructed by Mr.Ogunde

Court Assistant Millicent

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 15th March 2020 and subsequent directions of 21st 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 had been guided by Article 159(2)(d) of *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 *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.

