



REPUBLIC OF KENYA



**KENYA LAW**  
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**Riley Falcon Security Services v Ngisa (Appeal E051 of 2024)  
[2025] KEELRC 2934 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2934 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E051 OF 2024  
NZIOKI WA MAKAU, J  
OCTOBER 29, 2025**

**BETWEEN**

**RILEY FALCON SECURITY SERVICES ..... APPELLANT**

**AND**

**ERICK NGISA ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon Robert Mobisa Oanda  
(SPM) delivered on 9th September 2024 in Winam SPMCELRC No. E051 of 2022)*

**JUDGMENT**

1. Mr. Erick Ngisa (Respondent) sued Riley Falcon Security Services (the Appellant) before the Magistrate's Court at Winam alleging unfair termination of employment. It was his case that his dismissal on account of the loss of a site key was malicious and unjustified. He stated that he had duly handed the key over to a colleague, one James Ombati, yet he was held liable for its loss. He further contended that despite the centrality of Ombati to the incident, he was not afforded the opportunity to cross-examine him, nor was he served with his witness statement prior to the disciplinary hearing. It was his further case that the disciplinary process was hurried and that he was induced to plead guilty on the promise of a pardon that never materialised. He added that although he worked from 6.00am to 6.00pm, he was never paid overtime. He therefore sought judgment for:
  - a. A declaration that the termination was unlawful and unfair;
  - b. Kshs. 181,703.28 being 12 months' salary compensation for unfair termination;
  - c. Kshs. 15,141/- being 1 months' salary in lieu of notice;
  - d. Overtime of Kshs. 193,908/-
  - e. Interest on (b), (c) and (d) from the date of filing suit till payment in full.



- f. Gratuity per Regulation 17(1) of the Regulation of Wages (Protective Security Services) Order 1998.
  - g. Certificate of service
  - h. Costs of the suit and interest from the date of judgment till payment in full
  - i. Any other relief the Honourable Court can grant.
2. In response, the Appellant maintained that the dismissal was both substantively and procedurally fair. It asserted that the Respondent had lost or misplaced the site key contrary to the terms of his contract, and that there was no proof he had handed it over to Mr. Ombati. The Appellant explained that it issued a notice to show cause, received a response, suspended the Respondent, and thereafter conducted a disciplinary hearing. At the conclusion of the hearing, it found that the Respondent had committed a significant breach of his duty of care, justifying summary dismissal.
  3. Upon hearing the matter, the Learned Magistrate found that the Respondent's dismissal was unfair. The court awarded the Respondent Kshs. 181,703/- as compensation equivalent to 12 months' salary, Kshs. 15,141.94 being one month's salary in lieu of notice, Kshs. 75,709/- in gratuity, together with a certificate of service, costs and interest.
  4. Dissatisfied with this judgment the Appellant lodged this appeal raising the following grounds:
    - a. The Trial Magistrate erred in fact and law in reaching a determination on the case before him that the Appellant's internal disciplinary hearing was conducted in a hurry without consideration of the tenets of a fair hearing
    - b. The Magistrate erred in law and fact in reaching a determination that there was no evidence of loss of property by the Appellant and that it was not established at trial that the Respondent participated in the loss of the key giving rise to the claim before him, in total disregard of the evidence by the Appellant and express admission by the Respondent confirming the loss of the key.
    - c. The Magistrate erred in law and fact in reaching a principal determination on the suit before him that the Respondent's summary dismissal was unlawful, wrong and unfair as a result of which the Respondent is entitled to the reliefs and/or orders prayed for.
    - d. The Learned Magistrate erred in law and fact in awarding the Respondent Kshs. 181,703.28 as twelve months' salary compensation in general damages for unlawful and unfair termination when there was no basis to make the award in view of the evidence presented before Court.
    - e. The Trial Magistrate erred in law and fact by awarding the Respondent Kshs. 15,141.94 as one month salary in lieu of notice when the same was proven to have been duly computed and paid as part of his final dues.
    - f. The Magistrate erred in law and fact by awarding the Respondent Kshs. 75,709.70 as gratuity pay when there was no basis to make the award in view of the evidence and submissions presented before Court.
  5. On the basis of the above grounds, it urged the Court to set aside the Trial Court's Judgment and dismiss the Respondent's suit with costs. It also urged the Court to award it costs of the appeal.
  6. In compliance with directions of this Court, both parties filed written submissions.



## Appellant's Submissions

7. The Appellant identified two issues for determination:
  - a. Whether the Respondent's summary dismissal was unlawful, unfair and inhumane; and
  - b. Whether the Respondent is entitled to any of the reliefs awarded by the Magistrate's Court.
8. On the first issue, the Appellant asserted that the dismissal complied with sections 41, 44 and 45 of the *Employment Act*. It submitted that the Respondent's only contention was lack of a fair hearing. It maintained that the process was fair and not hurried, noting that the notice to show cause issued on 11<sup>th</sup> January 2022 allowed 48 hours to respond, but the Respondent submitted his response within 24 hours, indicating no objection to the timelines. In further support of the fairness of the process, the Appellant submitted that the Respondent was accorded an opportunity to cross-examine Mr. James Ombati and to be accompanied by a representative during the hearing but chose not to exercise these rights. It drew attention to the summons for disciplinary hearing produced as REXH 8 informing him of his right to have a representative, as well as the minutes of the disciplinary hearing. It pointed out that the disciplinary hearing took place more than a week after receipt of the reply to notice to show cause, thereby affording the Respondent sufficient time to prepare. It relied on the decision in *R v Immigration Appeal Tribunal Ex-parte Jones* [1988] 1 WLR 477, 481, in which it was held that decision making bodies other than courts have latitude on their own procedures, provided they achieve an appropriate degree of fairness. Regarding the reason for dismissal, the Appellant submitted that losing the key was a serious breach of contract warranting summary dismissal. It asserted that the Respondent failed to provide sufficient explanation of how he lost the key. It referred to the Respondent's admission before the disciplinary committee and to clause 1.5.8 of the contract, which made him the sole custodian of the key and personally liable for its safety.
9. The Appellant also submitted that the issue of the 48-hour response time to the notice to show cause was not pleaded and should not have been considered. It relied on the decision in the case of *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR, which underscored that parties are bound by their pleadings and that evidence at variance with pleadings should be disregarded.
10. On the awards, the Appellant submitted that the 12 months' salary compensation was unjustified since the dismissal was lawful. It relied on the case of *George Okello Munyolo v Unilever Kenya* [2019] eKLR, which held that the loss of a claim for unlawful termination disentitled the Claimant from the reliefs sought. In addition, and without prejudice to the foregoing, the Appellant maintained that the Respondent did not prove any special circumstances warranting the maximum award.
11. Regarding the award of 1 months' salary in lieu of notice the Appellant submitted that the Respondent was not entitled to it upon summary dismissal, and cited the case of *Vincent Abuya Obunga v Mast Rental Services Limited* [2019] eKLR. Adding that the amount was already included in his final dues. With respect to gratuity, the Appellant submitted that it was neither provided for in the contract nor payable in view of the Respondent's NSSF membership and summary dismissal. It relied on section 35(6) of the *Employment Act*, section 17(2) of the Regulation of Wages (Protective Security Services) Order 1998, and the decision in *H. Young & Company Limited v Javan Were Mbango* [2016] eKLR which in citing the decision in *Pathfinder International Kenya Limited v Stephen Ndegwa Mwangi* [2019] KECA 759 (KLR), acknowledged that gratuity is not a statutory entitlement, but is usually payable under contract terms or CBAs.



12. In light of the foregoing, the Appellant urged the Court to allow the appeal and dismiss the Respondent's claim before the Magistrate's Court with costs.

### **Respondent's Submissions**

13. The Respondent opposed the appeal, maintaining that the Appellant had not proved the reason for dismissal. He asserted that the Appellant had not disputed the fact that he handed the key to Mr. James Ombati and supported the Magistrate's finding that the loss did not justify termination. He relied on *Leon Yang Wang v Equity Bank* [2023] eKLR, which emphasised proportionality between misconduct and sanction meted out. In further opposition to the appeal the Respondent asserted that the disciplinary process was unfair. In particular he asserted that the 48-hour timeline to respond to the notice to show cause did not afford him adequate time to prepare a defence. He cited the decision in *Riley Falcon Security Services v Omollo* (Appeal E037 of 2022) [2024] KEELRC 389 (KLR) (29 February 2024) (Judgment), which held that a period of 48 hours to respond to a notice to show cause was unjust and could only precipitate an unfair termination.
14. On the remedies, the Respondent submitted that the award of 12 months' salary compensation was justified under section 49(c) of the *Employment Act*, and the Appellant had not shown any basis for interfering with the Trial Court's discretion. Concerning 1 months' salary in lieu of notice the Respondent submitted that it was justified as he was dismissed without notice. He placed reliance on section 35(1)(c) of the *Employment Act* which requires a 28-day written notice to the employee. He also relied on section 36 of the *Employment Act* which mandates payment of 1 months' salary in instances of termination without notice or insufficient notice.
15. In respect of gratuity the Respondent submitted that he was entitled to the benefit by virtue of his designation as a security guard which is protected under the Regulation of Wages (Protective Security Services) Order 1998. Finally, he urged the Court to award him costs both in the Trial Court and on appeal, on the principle that costs follow the event.

### **Disposition**

16. The fact that the Respondent was able to respond within 24 hours on a demand to give an explanation within 48 hours does not absolve the Appellant from the accusation made that it did not give the Respondent adequate time to respond to the notice to show cause. A reasonable time is expected and a period of 48 hours cannot be said to be sufficient in this case. I therefore will not disturb the finding of the Learned Magistrate on this score. The quantum in relation to compensation is a discretionary aspect of the Learned Magistrate's appreciation of the facts and the case before him. An appellate court will not interfere with a trial court's exercise of discretion unless it is demonstrated the trial court was "plainly wrong" or made a "serious mistake". Where a trial court ignores a material factor, relies on an improper one, or commits a serious error in weighing proper facts, interference by the appellate court can be countenanced. As an appellate court it is improper for me to simply substitute my own opinion for that of the trial court. I find that there was no improper exercise of discretion by the Learned Hon. Magistrate.
17. I find that the only issue that is improperly decided was the award of one month notice in the sum of Kshs. 15,141/-. This was computed in final dues and therefore could not be granted as a relief. In light of the foregoing the Court will remove this award from the final sum payable by the Appellant. As the appeal has substantially failed save for the reversal of the notice pay, the parties will each bear their own costs in this appeal.

Orders accordingly.



**DATED AND DELIVERED AT KISUMU THIS 29<sup>TH</sup> DAY OF OCTOBER 2025**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

