**Sheer Logic Management Consultants v Baha (Appeal E253 of 2024)**
**[2025] KEELRC 2867 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2867 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**APPEAL E253 OF 2024**

**K OCHARO, J**

**OCTOBER 9, 2025**

**BETWEEN**

**SHEER LOGIC MANAGEMENT CONSULTANTS ..... APPELLANT**

**AND**

**RICHARD MASHA BAHA ..... RESPONDENT**

***(Being an Appeal from the judgment of Hon. R.N Akee delivered on 28th October 2024 in Mombasa MCELRC Cause No. E486 of 2021)***

**JUDGMENT**

## Background

1. At all material times, the Respondent was employed by the Appellant as a Customer Attendant. Contending that the Appellant terminated his employment without any justifiable reason and without adhering to the principles of procedural fairness, he sued the Appellant through the suit herein above mentioned, seeking declaratory and compensatory reliefs.

2. The Appellant, a labour outsourcing and HR consultancy, denied the Respondent's claim, asserting that he was lawfully dismissed for gross misconduct after involvement in a fuel fraud scheme in collusion with drivers from a third party. The dismissal complied with the principles of procedural fairness.

3. It is important to note that during the proceedings before the trial court, the dispute was referred for court-annexed mediation. As a result, a partial mediation agreement dated 9th May 2022 was adopted by the court. The parties agreed on the Respondent's claim for unpaid salary for May 2021, compensation for earned but unused leave days, and the unpaid house allowance. Three issues were identified for determination by the trial court: whether the Claimant was unlawfully dismissed, the quantum of damages for unlawful dismissal, if any, that the Claimant is entitled to, and who is to bear the costs of the suit.

4. After hearing the parties on their respective cases, the trial Court found in favour of the Respondent's case, declaring that his dismissal from employment was unfair, and directed the Appellant to pay him dues under various heads of his claim.

**The Respondent's case before the trial court**

5. It was the Respondent's case that he first joined the employment of the Appellant under a fixed-term contract dated 25th January 2019, with a monthly salary of KShs. 561. He was based at the Appellant's client's Shimanzi station. The contract period ran from 3rd January 2019 to 28th February 2019. The Appellant subsequently renewed the contract. This second contract was fixed for the term from 1st March 2019 to 30th August 2019. Subsequent renewals were made up to 28th February 2021.

6. After this date [28th February 2021], he continued working for the Respondent at the same station until 26th May 2021, when the Appellant issued him a show cause letter, alleging that they had received a report via an email dated 25th May 2021, stating that he and some drivers of a fleet company were involved in a fraudulent scheme. The drivers could deliberately draw less fuel, but the owner charged for more than the amount drawn. Then they, along with the Claimant, would share the proceeds of the fraud. He was required to respond by the close of business on the same day.

7. He was never provided with a copy of the alleged report. Additionally, the notice period was unreasonably short. Nonetheless, by a letter dated 26th May 2021, he responded to the show-cause letter, denying all allegations.

8. The Respondent asserts that after submitting his response, he was directed not to report to work and was sent home without pay. His attempts to follow up with the Appellant regarding the matter did not yield any information about the status of his employment.

9. The Appellant was not called for any disciplinary meeting afterwards. His May 2021 salary was unlawfully withheld, prompting him to engage an advocate who sent a demand letter. Only after receiving this letter did they attempt to arrange a disciplinary hearing.

10. Their failure to convene a disciplinary hearing and their unlawful withholding of his May 2021 salary left him in limbo about his employment status. The Appellant's acts and omissions amounted to unfair labour practice and a breach of the statutory provisions under sections 41, 43, and 45 of the *Employment Act*. They amounted to unfair termination.

11. The Appellant did not give him any reasons why they required him to no longer report to work. Consequently, he was not provided with any reasons for his employment being terminated. He was not afforded a hearing before the termination.

12. He sought for the following reliefs:

    a) Salary arrears for May 2021 – KShs. 17,561.00

    b) One month's salary in lieu of notice – KShs. 17,561.00

    c) Payment in lieu of annual leave (2021) – KShs. 5,121.90

    d) Outstanding house allowance (May 2018 – May 2021) – KShs. 97,463.55

    e) Compensation for unfair termination (12 months' salary) – Kshs. 210,732.00

    f) Certificate of Service

    g) Costs of the claim

h) Interest on (a)–(e) and (g)

**Appellant's case before the trial court**

13. The Appellant admitted that at all material times, the Respondent was its employee serving under fixed-term contracts at various intervals as a Customer Attendant stationed at its client's, Lexo Energy, Shimanzi station, with a monthly salary of Kshs. 17,561 until his dismissal.

14. On or around 10th May 2021, they received a complaint from their client, Lexo Energy, alleging that the Respondent was colluding with fleet drivers to defraud customers. It was alleged that instead of dispensing the correct fuel amounts, the Respondent under-fueled vehicles, shared the surplus cash with the drivers, and falsified fuel receipts.

15. One such instance involved a Probox motor vehicle, registration number KCM 176P, which was recorded as having been fueled to a capacity of 58 litres, despite its maximum tank capacity being 50 litres.

16. To verify the allegations, the Respondent conducted a test on 13th May 2021, utilising the exact vehicle when it was nearly empty. The vehicle only took in 43 litres, thereby confirming discrepancies with earlier records.

17. Following the test, the client compiled a report indicating that the drivers involved had confessed to colluding with the Respondent and his colleague. The report also included worksheets showing excess litres recorded by the Respondent, confirming his participation in the fraudulent activities.

18. Consequently, by a letter dated 26th May 2021, they issued a notice to show cause, requiring the Respondent to explain why disciplinary action should not be taken against him for gross misconduct.

19. The Respondent submitted a response to the show-cause letter and was subsequently summoned to a disciplinary hearing scheduled for 24th June 2021. Nevertheless, he did not attend the hearing.

20. Following his absence, the Appellant rescheduled the hearing for 28th June 2021 at 2:00 p.m. and issued another invitation via email for the disciplinary hearing. The Respondent again failed to attend and, instead, through her advocates, sent a demand letter dated 25th June 2021, received by the Appellant on 28 June 2021, demanding terminal dues and compensation for unfair dismissal.

21. In response, they stated that the Respondent had failed to attend the disciplinary hearings despite multiple reminders. The Appellant made a third attempt to invite him to another hearing scheduled for 30 June 2021 at 11:00 a.m., which he again ignored.

22. In light of the Respondent's repeated failure to attend disciplinary hearings, the Appellant proceeded to dismiss him from employment on 1st July 2021 summarily. The summary dismissal letter was sent via email and registered post, and the Respondent was informed of his right to appeal the decision.

**Judgment by the lower court**

23. The trial Court, in its Judgement, the trial Court, identified three issues for determination: whether the Respondent was dismissed, whether the dismissal was unfair or unprocedural, and whether he was entitled to the reliefs sought. It answered all the issues affirmatively, holding that the Appellant did not prove that the reason for the termination of the Respondent's employment was based on a valid and fair reason, and in conformity with procedural fairness. As such, the termination was unfair by dint of the provisions of Section 45 of the *Employment Act*.

24. Consequently, the court awarded the Respondent KShs. 200,000 as compensation for unlawful termination, and Kshs. 80,000 as the costs of the suit.

**The appeal**

25. Dissatisfied with the Judgment of the lower Court, the Appellant filed the instant appeal, setting forth the following grounds:

    a. The learned trial magistrate erred in law and fact by finding that the appellant was liable for unfair termination, yet there was sufficient proof and evidence tendered in court that proved that the appellant was justified in dismissing the respondent summarily.

    b. That the learned trial magistrate erred in law and fact by finding that the appellant was liable to pay compensation award of Kshs. 280,000/-yet all evidence tendered in court proved the reason for termination, and that the appellant duly followed due procedures.

    c. The learned trial magistrate erred in law and fact by finding that the appellant was liable for unfair termination without taking into consideration the pleadings filed by the appellant, giving an analysis/basis or reasons on how it reached the decision that the termination was unfair.

    d. That the learned trial magistrate erred in law and fact by finding that the appellant was liable for unfair termination without making reference in its judgment to any single evidence and or pleadings tabled before it by the appellant.

    e. The learned trial magistrate erred in law and fact by finding that the appellant was liable for unfair termination by referring to the wrong facts of the case; at no point was the Respondent accused of bringing another person to stay with him at work, as claimed in the last two lines of clause (c) of the judgment.

    f. That the learned trial magistrate erred in law and fact by finding that the appellant was liable for unfair termination, failing to consider the evidence the appellant presented to the court showing that the respondent was committing fraud with fleet drivers, supported by fuel records; and additionally, that the respondent was given a fair procedure regarding his termination but failed to attend despite reminders.

**Analysis and determination**

26. The role of a first Appellate Court is now trite. On it, the Court in the case of Selle & Another v Associated Motor Boat Co Ltd & Others [1968] EA 123, aptly stated as follows: -

> " ...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ...is by way of retrial, and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

27. I have thoroughly examined the grounds of appeal, along with the parties' pleadings, the oral and documentary evidence presented before the trial court. In my view, this appeal hinges on two main issues: (a) whether the Appellant unfairly dismissed the Respondent, and (b) whether the damages awarded by the trial court should stand.

28. Before I proceed to consider the two issues identified for determination, I must respectfully point out to the learned trial Magistrate that the decision in Kenya Airways Limited v Aviation and Allied Workers Union & 3 others [2014] eKLR, on which she relied, was irrelevant and would not address the issues before her for examination. Legal precedents must be used purposefully and in a relevant manner.

29. Further, the Court notes that the grounds of appeal set out in the Appellant's memorandum of appeal are unnecessarily and overly split and repetitive. The practice of so doing should, at all costs, be avoided for the expeditious disposal of appeals and clarity of issues to be determined therein.

30. Fairness in the termination of an employee's employment involves two statutory aspects, as outlined in section 45 of the *Employment Act*: procedural and substantive justification. The absence of either or both of these aspects renders the termination unfair.

31. Section 41 of the *Employment Act* provides for a mandatory procedure that an employer intending to terminate an employee's employment shall conform to, if the termination has to be considered fair. The employer shall be notified of the employer's intention and the grounds spurring the contemplation. They must be accorded an adequate opportunity to prepare and make a representation on the grounds. Conjoined with this right to defend themselves is the right of accompaniment. The affected employee should be allowed to be accompanied during the hearing by a colleague of their choice or a trade union representative, if they are a member of a trade union. Lastly, the employer shall consider the representation by the employee and/or the accompanying person before making a final decision.

32. The Claimant contended that he was dismissed from employment without being given an opportunity to attend any disciplinary hearing, a forum where he could defend himself against any accusations. He was never invited to any disciplinary meeting/hearing. The Appellant, on their part, argued that the Respondent was invited to a disciplinary hearing not once, not twice, but refused to attend, leaving them with no option but to dismiss him summarily from employment.

33. All that the law enjoins the employer to do is to provide an adequate opportunity for the employee to be heard on the accusations made against him before rendering a final decision on the disciplinary matter. When such an opportunity is afforded, but the employee chooses not to avail himself of it, the employer is permitted to proceed and reach a decision; however, the decision must be substantively justified. The employee could not thereafter successfully contend that the termination of his employment or summary dismissal was procedurally unfair.

34. At this point, the question that springs up then is, was the opportunity accorded? The Appellant asserted that the Respondent was first invited to a disciplinary hearing, scheduled for 28th June 2021, via a letter dated 24th June 2021. It was contended that the same was sent via email. The Respondent denied the alleged service. It was incumbent upon the Appellant, who was asserting the service, to prove it. I have carefully reviewed the documents and evidence presented to the trial Court, and without hesitation, conclude that the email correspondence under the cover of which the letter was allegedly sent was not part of them. The email address that was used was not stated at all.

35. This Court has not lost sight of the contents of the Appellant's email correspondence to Counsel for the Respondent. It didn't mention that any invitation letter was sent to the Respondent via email. The letter, dated 28th June 2021, purportedly addressed to the Respondent as well. If at all there was any service via email, nothing could have been easier for them than to mention this vital matter, instead of baldly asserting in them that the Respondent was called and notified of the hearing.

36. By reason of the premises, I am not convinced that the letter dated 24th June 2021 was served on the Respondent as alleged or at all.

37. The Appellant argued that after the Respondent failed to attend the hearing scheduled for 28th June 2021, a decision was taken to give him another opportunity to appear before a disciplinary committee and defend himself. The disciplinary hearing was then rescheduled to 30th June 2021. There is no email correspondence from the Appellant to the Respondent with the letter attached, which was exhibited before the trial Court to prove the alleged service via email. I note that under his evidence under cross-examination, the Appellant's witness testified that the Respondent was called for the hearing but did not show up. The person who allegedly called the Respondent via phone did not testify, leaving this evidence, as presented by the witness, standing as mere hearsay.

38. In conclusion, I am not persuaded that the letter dated 28th June 2021 was ever served on the Respondent.

39. The Appellant asserted that the Respondent did not attend the hearing scheduled for 30th June 2021, which led to the Appellant's decision to dismiss him summarily. I cannot interpret it in any other way than that there was no meeting held on this day for two reasons. First, having concluded that there was no service of the letter dated 28th June 2021, and my clear view that the letter was fabricated for this case in an attempt to sanitise a flawed process. Second, no minutes were provided to support the existence of such a meeting or a resolution for the dismissal of the Respondent.

40. The Appellant stated that the dismissal letter dated 1st July 2021 was sent to the Respondent via registered post. The Respondent denied receiving this letter. I have carefully considered the letter, which is addressed to "Richard Masha Baha, Lexo-Shimanzi, P.O. Box 8305-80101, Mombasa." It appears, therefore, to have been sent to the postal address of the Appellant's client, where the Respondent was deployed until 26th May 2021. This leads me to conclude that this letter, just like the others, was a fabrication intended solely to deceive the trial Court.

41. The Respondent asserted that, in the circumstances of the matter, he was dismissed from employment on 26th May 2021, when he was told not to report back to work the following day. The Appellant did not challenge this evidence. They did not account for the period from 26th May 2021 to 1st July 2021, when they purportedly summarily dismissed the Respondent. This, coupled with the foregoing premises, leads this Court to agree with the Respondent and conclude that his employment was terminated on 26th May 2021, in the manner he explained.

42. Blinded by the position they took and the fabricated letters, the Appellant didn't present a reason for the summary dismissal of the Respondent that occurred on 26th May 202. As such, they didn't discharge the legal burden that was on them pursuant to the provisions of section 43 of the *Employment Act*, [proving the reason for termination], and section 45[2], that the reason was valid and fair.

43. Addressing the burden, the Court of Appeal in case Pius Machafu Isindu v Lavington Security Guards Limited [2017] KECA 225 (KLR) held,

> "There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41, requiring notification and a hearing before termination. The Act also provides for most of the procedures to be followed, thus obviating reliance on the *Evidence Act* and the *Civil Procedure Act*/Rules."

44. Section 49[1][c] of the *Employment Act* bestows upon the courts the power to grant compensatory relief for an employee who successfully challenges the termination of his employment or their summary dismissal as unfair or wrongful to an extent of a maximum of twelve months' gross salary. The power is discretionary and is exercised on a case-by-case basis.

45. The learned trial magistrate awarded the respondent KShs—200,000 for unfair termination. In doing so, she exercised judicial discretion. It is now well-established law that an award made by a trial court in the exercise of a discretionary power can only be disturbed by an appellate court if specific conditions are met. The trial court took into account an irrelevant factor, omitted a relevant factor, or applied an incorrect principle of law, resulting in an erroneous decision, an excessive award, or an unduly low award. See also, Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2) Civil Appeal No 21 of 1984 [1985] KECA 137 (KLR).

46. The Appellant did not advance any of these factors as the basis for which they would want this Court to disturb the learned magistrate's decision that was reached pursuant to a statutory discretionary power.

47. However, I must point out with concern that I note that the trial magistrate just awarded the amount without giving any reason for the awarded sum. This was an error in law.

48. However, that is not to say that the Respondent was not entitled to a compensatory relief under section 49[1][c], as this Court has found that the learned trial magistrate didn't err in finding that the termination of the Respondent's employment was unfair. I have carefully considered the manner in which the Respondent's employment was terminated, the non-adherence to the tenets of procedural and substantive fairness on the part of the Appellant in the termination, the uncandid conduct of the Appellant and, more specifically, that of presenting fabricated documents intended to defeat the course of justice, and the length of service of the Respondent, and the fact that such conduct needs deterrence, and find that the Respondent was entitled to the relief, to the extent of 11 months' gross salary, Kshs. 193,171.

49. As such, the award of KShs. 200,000 for unfair termination is reduced to KShs. 193, 171.

50. In conclusion, the Appellant's appeal is considerably unsuccessful. Accordingly, the costs of this appeal are awarded to the Respondent.

51. Orders accordingly.

**READ SIGNED AND DELIVERED THIS 9TH DAY OF OCTOBER 2025.**

**OCHARO KEBIRA**

**JUDGE**